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"Planning Law" Notes

The Minister of Housing and Local Government: "I will do my best, but I am afraid that the Town and Country Planning Act is not a question of exploring avenues but of feeling one's way around a maze" (House of Commons, November 27, 1951).

The Minister of Housing and Local Government has issued two circulars both dated November 27, 1951. Circular No. 70/51 deals with new house designs to enable more houses to be obtained from the available materials, labour and money. Circular 73/51 gives local housing authorities discretion to issue building licences up to a maximum of one-half of their 1952 allocation. The Minister is prepared to consider applications for loan sanction (a) by authorities acquiring land to be leased or sold with a view to erection of houses thereon by persons other than the local authority, (b) to enable local authorities to encourage house ownership. The Minister will also consider applications from local authorities for permission to sell houses.

Although a departure from their past policy, the Lancaster City Council have instructed their Town Clerk to obtain all necessary consents to the use of a site owned by the Corporation for use as a caravan site. It is intended that this shall accommodate not more than 20 caravans for a period of not more than five years.

The step has been taken with a view to alleviating, however slightly, the housing situation in the city.

The Felixstowe Urban District Council have rejected an application to allow 36 residential caravans on a site licensed for use as a holiday camp during the summer months. The application was refused under s. 269 of the Public Health Act, 1936, on the ground that the site was unsuitable as a

residential caravan site because the land was low-lying and in the winter-time was liable to become waterlogged. It was resolved to recommend the refusal of the application by the local planning authority on the grounds (i) that the site was originally approved and intended to be a holiday caravan site, (ii) that any proposal to change the use of this land from a holiday caravan site into a residential caravan site was to be deplored, and (iii) that in the opinion of the Council the site would be unsuitable under winter conditions.

At a meeting between the County Councils Association and representatives of the leading petroleum companies it was agreed (i) that the companies would enter into prior informal consultation with the local planning authority concerned whenever a general scheme of improvement of petrol filling stations was contemplated, (ii) that every effort would be made to avoid damage to amenities by unsuitable painting of garages, (iii) that the companies would produce a range of signs, etc., for selection by the local planning authority of an appropriate sign in scale with the building and site concerned, and (iv) that the companies would encourage the removal of unnecessary signs on sites "adopted" by them.

Development plans continue to be "in the news," with public inquiries taking place in many different parts of the country (*post*, p. 25). The references to them in the daily Press are few and brief. We hope that readers will send to this Journal particulars of any unusual features of any of the plans, and of any other matters in connection with proceedings at any of the inquiries which are thought to be worthy of comment.

A detailed summary of the Mineral Development Charge Set-Off Regulations, 1951, which have now been confirmed by Parliament, is printed at p. 31, *post*, with references also to the relevant provisions of the Mineral Workings Act, 1951.

The position of the owner of near ripe minerals is, as a result of these regulations, a very satisfactory one from his

own point of view. He is, in effect, given exemption from development charge, which will be entirely set off against the Part VI payment, and if owing to refusal of planning permission or some other reason a payment from the £300 million does become due, it will be at 100 per cent. of development value.

Other claimants upon the £300 million fund will have less reason to be satisfied with the regulations. These preferential 100 per cent. claims on the fund will very substantially reduce the amount available for other claimants, whose claims will have to be scaled down to the point where in aggregate they do not exceed the balance (if any !) which remains.

Erskine Simes, Esq., K.C., has been appointed a member of the Lands Tribunal.

The Minister of Housing and Local Government, Mr. Harold Macmillan, has presented to Parliament reports of the twelve New Town Development Corporations of England and Wales (H.M.S.O. 10s.). These reports, which are made in accordance with the provisions of the New Towns Act, 1946, give accounts of progress in each of the towns up to March 31, 1951.

The Lands Tribunal Rules, 1949, have been extended to cover cases referred to the Tribunal under Acts of Parliament passed since the Lands Tribunal Act, 1949, and amended in regard to the right of audience before the Tribunal, the procedure on rating appeals, and certain other minor matters. See *post*, p. 28.

The Minister has issued another Bulletin of Selected Appeal Decisions, several of which contain points of interest (summarised, *post*, pp. 50–56).

These include decisions that the standard condition in the General Development Order, 1950, as to not obstructing the view of persons using a road, refers only to the development

itself, and the erection of a garage may be permitted development under class 1 notwithstanding that such obstruction may be caused by the vehicles using the garage (No. 14); that the installation of a diesel generator in a shed is not development (No. 15); and that where several buildings form a comprehensive unit their use is determined by the use of the unit as a whole (No. 18).

In other cases, the question as to what constitutes use of a house as two separate dwelling-houses, under s. 12 (3) of the Act, was considered (No. 19); and the use of a fish and chip shop for manufacturing potato crisps, the use of a lock-up shop as a branch insurance office, and the use of an additional room in a dwelling-house as bank premises, were all held to be material changes in use (Nos. 21–24).

The question whether minerals deposited on land have become part of the land so that it is development to work them was considered in an appeal noted at p. 58, *post*. A previous decision was reported at [1951] J. P. L. 437–9, and this question considered in para. 4 of the Supplement to the Central Land Board's Practice Notes (see [1951] J. P. L. 49).

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the MANAGING EDITOR, *Journal of Planning Law*, 3 CHANCERY LANE, LONDON, W.C.2. *Every attempt will be made to return drafts or unsuitable copy, but no guarantee can be given in this respect. Books for review should be sent to the Publishers at the above address.*

A Twenty Year Plan for London

By Patrick Stirling, Barrister-at-Law

The draft Development Plan for the County of London was published a few months ago, and the final stage in the preparation of the plan for submission to the Minister has now been reached. This plan, unlike its predecessors, is limited, in the main, to practical proposals which the authority consider likely to be carried out within the next 20 years, and the detailed preparation involved has revealed some complex planning problems which underline the practical limitations and difficulties that a planning authority may encounter in the future. It is proposed, first, to summarise the more important proposals in the plan and, secondly, to consider some of the planning problems raised thereby; it has not been possible, however, to include a detailed examination of the proposals for the reconstruction of individual areas such as those for the City of London, each of which would require a separate article.

Two preliminary and important factors have governed the preparation of the plan. In the first place, the Council has planned to conform to the Government statement made in the House of Commons on March 5, 1946, by the Minister of Town and Country Planning on the future planning of London. Three principles were laid down: (a) The overall growth of London's population and industry should be restrained; (b) a planned programme of decentralisation to the outer areas of greater London should replace the uncontrolled sprawl of the inter-war period; and (c) the general line of decentralisation and resettlement should broadly conform to the proposals of Sir Patrick Abercrombie for dividing the area surrounding the County of London into four rings. In the second place, a close estimate of financial resources likely to be available to the Council during the period of the plan has been prepared, and it is hoped that this combination of physical and financial planning will ensure that the proposals are realistic and practical.

The four major defects of present-day London are listed as: (1) depressed housing; (2) traffic congestion; (3) haphazard intermixture of industry and housing; and (4) lack of open

space. These defects are accentuated by the acute scarcity of sites for new schools and houses, hospital extensions, open space and other urgent requirements, and by the fact that these major users of land all have higher standards than before and, as a result, require a larger acreage on redevelopment. It is clear that the decentralisation of population and industry is one of the fundamental planning problems in the County of London if the higher standards now generally recognised as desirable are to be achieved. The reduction of 500,000 persons in the county's population between the years 1921 and 1939, and the present annual movement of population in and out of the county, support the view that a decentralisation of population need not necessarily be opposed to the wishes of the people.

The Council hope to ensure satisfactory modern development and to abolish overcrowding by creating four main residential density zones, decreasing from 200 persons per acre at the centre and averaging 200, 136, 100 and 70 persons per acre. The plan shows 2,496 acres as zoned for housing redevelopment during the first five years, and tentative proposals are shown for the redevelopment of a further 3,168 acres for the same purpose during the remaining 15 years. These 5,664 acres at present accommodate approximately 305,900 persons, and when redeveloped will house approximately 578,860. This increase in accommodation to be provided on sites at present used for housing does not mean, however, that there is no problem of overspill in relation to these proposals, as it is estimated that there are at least 400,000 persons at present on the list awaiting housing accommodation.

The present congestion on the roads is partly due to the fact that the road system has evolved gradually and has never been planned as a whole, while the decision of the Government to abandon the proposal for a new inner ring road round the central area has necessitated a complete revision of the earlier and more ambitious schemes based on a ring and radial road system. The intention of the authority is " that the ultimate highway structure of the county shall be based on the existing network of principal traffic routes, improved where practicable by reconstructing intersections, widening roads or constructing new sections of the routes on a comprehensive and co-ordinated basis . . . it is proposed to concentrate . . . on an existing route enclosing the inner area, and on two others which cross north to south and east

to west, and on the development of a longer term comprehensive road system." It is estimated that the plan should provide for a 50 per cent. increase in traffic volume over the period of the plan and that the necessary measures to deal with such an increase must take approximately half a century to complete.

During the next five years it is hoped to enlarge Hyde Park Corner and construct a new carriageway incorporating Park Lane and the present parallel route inside the Park so as to link Hyde Park Corner with an improved Marble Arch roundabout. Among other improvements are six new fly-overs, seven miles of major widening and $10\frac{3}{4}$ miles of new traffic routes and 37 intersections on the roundabout principle. It is estimated that the road proposals for the next five years will involve the displacement of 17,824 persons and an expenditure of £20.5 million. The cost of the road proposals during the remaining 15 years is calculated to be £60.3 million. The absence of adequate parking space for cars is accepted as an acute problem, but no sites are shown as the matter is still under discussion at the instance of the Minister of Transport.

The plan shows 1,060 acres zoned for new open space. London has many fine public parks and open spaces, but there are not enough of them. An ultimate target of four acres per 1,000 persons inside the county has been agreed upon and, as a first step towards its realisation, it is proposed to acquire enough land to make two and a half acres per 1,000 available in those areas where the present provision falls short of this standard. This interim measure will require an additional 3,000 acres, but it has not been found practical at this stage to make more ambitious proposals than those for 1,060 acres which are estimated to involve the displacement of 82,500 persons.

The proposals for reconstruction in the City are based on the proposals put forward by Doctor C. Holden and Professor W. G. Holford. Steps have already been taken to secure an open setting for St. Paul's between a new traffic route along Carter Lane and a new road to the east of the Cathedral between Newgate Street and Cannon Street. The height, use and appearance of the buildings, on the perimeter will be strictly controlled. A new east to west route from Moorgate to the Old Bailey is included and it is proposed to widen Upper and Lower Thames Streets. Approximately 244 acres in the City are included in an area of comprehensive redevelopment which

contains the most heavily damaged parts of the City. It is proposed to make the river more accessible by gradually extending the Victoria Embankment: a walkway along the river bank from Blackfriars Bridge is shown which it is hoped ultimately to extend as far as London Bridge. New roundabouts are proposed at Ludgate Circus, Blackfriars and Holborn Circus.

The school proposals are based on the London School Plan which requires a 200 per cent. increase in sites. The improved standards introduced by the Education Act, 1944, and the raising of the school-leaving age have brought new problems to almost every educational authority in the country and these are particularly acute in a closely developed and land hungry area such as London. The extension of school sites and the building of new schools requires an additional 310 acres during the first five years and a further 928 acres during the remaining 15 years, and will involve a displacement of no fewer than 51,000 persons.

The problem of industrial planning has raised most complex questions of policy and has, at the same time, necessitated a consideration of the scope and limitation of present planning powers. Some provision has been made for the relocation of non-conforming industry in the hope that it will be possible to progress towards reducing the existing indiscriminate intermixture of houses and factories. It is estimated that 1,460 acres of industrial development are located in residential areas, of which 1,170 could be accommodated in areas zoned for industrial use. London is now recognised as a contraction area in which the amount of industrial capacity should be reduced and decentralised to correspond with the reduction in population, and it seems, therefore, that 300 acres are required for industrial development outside the area.

In contrast to this policy of decentralisation, recent surveys have shown that the industrial acreage of the whole county has substantially increased since 1934 and reflects both the spread of industry into former residential districts and a greater acreage required by modern industry. There is, however, a desire in some industries to move out of the over-congested central areas, but this has largely been thwarted by building restrictions and the levy of development charge.

This contrast between recent trends and future policy raises the problem as to the extent to which the existing planning powers could achieve the desired reversal in the trend of

industrial development and location. It seems that the planning powers alone of the Council would not be sufficient. The Act of 1947 not only preserved existing rights in respect of existing use of land, but also conferred limited rights of extension. The General Development Order, 1950, permits the extension of industrial buildings up to 5,000 square feet without planning permission. Such extensions to existing industrial premises (which may take place without the knowledge of the Council) could of themselves lead to a substantial increase in industrial capacity within the county. Again, the Use Classes Order permits a change of use within a category without planning consent, with the result that a factory may be vacated by an enterprise prepared to move to a New Town and be re-occupied forthwith by a factory entering London from outside. The problem of industrial planning appears, therefore, to centre round the fact that while there is a considerable amount of land available in industrial zones for future industrial development, there seems, on the other hand, to be little prospect of achieving the relocation of non-conforming industry in the near future; and if no restrictions are placed on the use of this land for industrial purposes, the authority may be faced with the establishment of completely new industries and with the arrival of new industries from outside the county. It follows that a solution of these problems is not dependent on the planning powers alone of the local authority, and will largely depend on the financial resources which are available to the authority (which are quite inadequate), and on such measures that can be achieved on a national level through collaboration with Government Departments, New Town Corporations and neighbouring planning authorities.

A close calculation of the financial resources likely to be available to the Council during the period of the plan has resulted in the estimate that an annual gross capital outlay, at current prices, of the order of £27 million during the next 20 years—a total of £540 million for the whole period—would be within the Council's resources. Only a fraction of this expenditure will be available for town planning purposes. Where implementation of the plan depends on financial resources rather than planning control, and bearing in mind the factors considered above in relation to industry, it seems that the financial resources of the authority, together with the Town Planning Grants on their present basis, will not be sufficient to make any substantial contribution towards the

implementation of the plan in view of the enormous capital outlay that would be required for the acquisition of land and buildings and for trade disturbance and removal expenses. An examination of the present position appears to justify the criticism of the present Town and Country Planning Grants Regulations made in an earlier article,[1] in which I attempted to show that the present rates of grant are so inadequate as to restrict severely the powers of a planning authority to deal with such problems. A revision of the grant system in favour of the authority is also supported by the fact that while the authority receives only a 20 per cent. grant towards the loss incurred in exercising planning control (where, for example, a factory site is bought in an area to be redeveloped), the whole of any consequential improvement in land values of the new site accrues to the State by way of development charge. It is reasonable to assume that the greater part of the financial resources available for planning purposes will be used in those areas of comprehensive redevelopment in which the planning authority will itself acquire and clear the land, and which qualify for the higher rate of " blitz " grant. The conclusion is that there will have to be a material improvement in the rate of planning grants payable to planning authorities such as the London County Council if planning control is not to be jeopardised by lack of financial resources.

The brief outline of the development proposals given in the earlier part of this article shows that their fulfilment will involve a substantial displacement of population; and the question again arises as to whether the planning powers available are sufficient to enable the planning authority satisfactorily to tackle this problem, the resolving of which is an essential condition for the realisation of the plan. An examination of the schedules to the plan shows that the approximate displacement of population over the 20 years on account of the development proposals will be in the region of 450,000 persons, to which formidable figure must be added those on the housing waiting lists and those displaced in the course of slum clearance. After allowing for the accommodation for 580,000 to be provided by the housing programme, the overspill of population during the first five years of the plan is estimated at 145,000, plus 235,000 during the remainder of the twenty year period, making a total of 380,000: of these 69,000 will be accommodated in out-county estates. The

[1] [1951] J.P.L. 437.

net overspill will be in the region of 311,000 persons. This position arises from the inclusion in the plan of proposals for redevelopment and the new building for houses, schools, hospitals and other services on modern and generally accepted standards. On the other hand, it is evident that the realisation of these projects depends on factors outside the scope and control of the planning authority and can only be achieved through co-operation with the Development Corporations of the New Towns, with the authorities of the towns to be expanded, and with the assistance of the central government.

It is impossible, within the scope of an article such as this, to deal with every aspect of a development plan of such size. An attempt has been made to summarise some of the important proposals in the plan and to consider some of the planning problems that arise. In conclusion we can say that if (a) the proposals of the London School Plan are carried out, (b) redevelopment takes place in accordance with the zoned densities, (c) industry is reduced, and (d) two and a half acres of open space per 1,000 population are provided, then the residential accommodation will be sufficient to house 3,200,000. In order to achieve this target the " pull " of the central area must be reduced and work and homes provided elsewhere. The decentralisation of population and work is the fundamental planning problem of London.

Reflections on Development Plans

By W. A. Leach, F.R.I.C.S.

A. Allocation, Definition and Designation

Under a 1932 Act planning scheme, the zoning plan of a built-up area was a prettily coloured patchwork quilt which was usually accepted as having little real significance. In modern parlance, "It didn't mean a thing." With all the turmoil over planning since the Uthwatt Report we have been taught to expect something more serious, and the matter now has to be considered under allocation, definition and designation.

Allocation—or zoning—may still mean very little. The fact that an authority allocates this area to shopping and that area to offices or residential use does not necessarily mean that existing non-conforming uses will be uprooted. There is the risk that uses seriously harmful to an area may become subject to discontinuance orders or seriously harmful buildings subject to removal or alteration orders under s. 26. The planning authority could bring the non-conforming use to an end by action under s. 26 (even if not actually in operation since a use does exist, die and revive as premises become occupied, void and reoccupied, so that its active resumption may be checked as soon as premises become empty), or they might refuse permission for a building suitable for the use when rebuilding becomes necessary, in which event a purchase notice could be served by the owner; but subject to the age of the building these will usually be long-term considerations. The allocation may sometimes be an advantage as indicating that a certain change of use from an existing non-conforming use would be most readily agreed.

Definition may be quite another matter: an area may be defined for purposes of comprehensive development (as to other instances of "defining," see B, *post*). The assumption in that case is that permissions for change of use or alterations are likely to be refused or granted only for limited periods, whilst permission to rebuild may very well be refused. The possible results are that there would be a reluctant market if

it were desired to sell the premises. Who wants to own premises which may sooner or later become subject to acquisition and are almost sure to be beset with difficulties in the matter of change of use or alterations? Who would want to rent shop premises without any certainty of continuity of trading, or of being able to reap the benefit of any goodwill created or the outlay on a shop front and fittings, etc. Who would wish to spend money on improvements? Who would lend money for improvements, expansion, etc.? Who would feel inclined to do more than carry out essential maintenance? "Definition" is not *positive* planning for the authority can do nothing until a designation map is approved; of itself it merely lays over the area the dead hand of prevention.

If the area is programmed the position is worse. Nobody really believes in the present programming but it does increase the doubts. Probably planners and objectors are just chasing paper and apart from blitzed areas very little of the adumbrated reconstruction is likely to occur as programmed. In a country which must work harder and harder to export more and more to remain solvent there just isn't the money for reconstruction except where a whole area is likely to become worn out at the same time. In the majority of areas there are buildings of all ages and of varying degrees of substance, and to reconstruct the area there would either have to be a wholesale clearance of good buildings, or a general policy of keeping sites vacant as buildings were demolished. The first would be prohibitive in cost whilst the second would kill the future of the area. However, the doubts would exist, and all the ills which come with doubts would fasten upon the area. We return to this question of costs in C, *post*.

Designation is something of a relief. At least the Act demands some measure of certainty of acquisition within 10 years. The sentence having been passed, one *may* not have to listen indefinitely for the tread of the executioner. Yet one suspects there will be many postponements and reprieves—again the doubts!

B. Defining Sites and Allocating Areas

Under s. 5 (2) (*a*) of the 1947 Act a planning authority may "define" the sites of proposed roads, other works, parks, etc., and "allocate" land for various purposes.

The point may be taken that the mere symbolic indication of a road on a basic plan does not define the site of that road,

and it would probably be admitted for the authority that the proposed road might ultimately lie on the route indicated or it might be within fairly wide deviations therefrom.

Probably nobody expects to find the precise route of a road and nothing but the precise route to be shown on the basic map. From compulsory purchase procedure we are accustomed to a route being laid down with "limits of deviation" varying according to the practical difficulties still to be solved at various points along the route. But the site is defined, for the acquiring authority cannot go outside the limits of deviation, and in practice these limits must be justifiable and not used as a means of postponing an adequate preliminary engineering consideration of the route. Unnecessary doubts and fears must not be aroused. The indication of a proposed new road on a basic map, however, is purely symbolic. It gives no true indication of intended width or site. It does no more than indicate that it is proposed to run a new road somewhere in the vicinity of the two lines which indicate a road on the plan. Can it be said that to define a site means no more than indicate an approximate site no part of which may ultimately be selected? Can defining a site of a proposed road mean anything less than showing its proposed route within reasonable limits of deviation? Reasonable limits of deviation would be permissible under the words "with such degree of particularity as may be appropriate" in s. 5 (2).

On practical grounds is it reasonable, after more than three years of considering the draft plan, that a dead hand should be put on property which may not be affected by the road as ultimately planned and on a swathe of property on either side of the symbolic route? If a definite route is indicated and it is found that a mistake has been made, that can be corrected in a plan amending the development plan. Flexibility has been provided for in practice: must there be the double-banked flexibility of a symbolic plan?

The same thoughts are applicable to the allocation of areas for different purposes. In this respect some development plans are showing sites of proposed schools and other projects not by any indication of the areas to be so used, but by printing on the plan a conventional sign which may have less accuracy than the crossed swords which indicate that a battle is reputed to have been fought thereabouts. Permission for permanent development for a considerable distance around the conventional sign will, presumably, be refused for possibly

20 or 30 years until it becomes necessary to determine the site with greater exactitude. This sort of thing is *not* allocating an area.

If the Minister can by regulations made under s. 5 (2) require or authorise vague indications of approximate locations what is the purpose of s. 5 (2) (*a*) in specifying sites and areas?

In view of s. 11 (2) (*b*) of the Act, it would seem that nothing should be indicated on a development plan for which there is no statutory authority, and a plan with symbolic markings would appear to be open to challenge. The issue is of some importance for it is submitted that it is only the land clearly embraced by the symbols which is subject to s. 14 (3) (*b*) of the Act, and art. 8 of the General Development Order, S.I. 1950, No. 728, will not be applicable to any other land.

C. Costing Development Plans

There is no provision in the Act or elsewhere that in preparing a development plan the authority is to have any regard whatever to cost. No doubt that was taken to be a common sense essential in any planning. The making of a development plan requires the balancing of advantages and disadvantages, and in doing that questions of cost are inescapable, or so one might have thought. Yet in a recent inquiry it was repeatedly said that no thought had to be given to the possible cost of the proposals. As development plans go it was a modest plan and seemingly for that reason it was thought that it would be within the financial ability of the authority. The facts that, as was admitted, it showed more improvements to be carried out in the next 20 years than had been carried out in the past 50 years, that today rates and taxes constituted an almost impossible burden, and that this country no longer has a vast investment income from abroad and is financially strained almost to the limit, seem not to have been considered. One does not altogether blame the authority. The Minister does not require local planning authorities to consider costs in preparing their plans. We are about to have plans for over 140 local planning authorities. If all these are being prepared without thought of cost, of what use are they? Is it not a waste of time to hold a long public inquiry into a plan which there may not be the remotest hope of bringing into effect? Is it not a little late to let ratepayers know what the cost is likely to be after the Minister has given his approval?

Is it proper for authorities who complain of the usurpation of their powers by the Central Authority to leave the costing (if it is done at all) to the Minister? It is the local authority which is answerable to the ratepayers.

If there are no costings how is the programme map prepared? Suppose the *five-year* proposals for an area would cost a modest £200,000—£250,000 : the interest charges on that might be, say, £8,000 p.a., which might equal a 5d. rate until the loan is repaid, without allowing for capital repayment. There will, of course, be grants reducing this charge on the rates, and if the grant is spread over the whole body of taxpayers, well, what is a few thousand pounds? But this sort of thing is going on all over the country and in effect the ratepayers, either as ratepayers or taxpayers, are going to find that 5d. rate—*if the work is carried out.* Many schemes are going to cost far more than a 5d. rate and this only for the five-year period.

If the work is carried out; but remember that the proposed national roads are not programmed. They are, however, possibly more vital, and in competing for priority for finance, labour and materials, they have the advantage of being sponsored by a Government Department. How can a local authority programme its work when the execution thereof depends on authorisations and grants from a higher authority who will not commit themselves to an overall programme, who have their own competing projects, and will not even commit themselves to a programme for these?

After more than three years of planning under the 1947 Act the width of the main roads shown on basic plans still remains to be determined by the Minister of Transport. Is it not possible that when active consideration does begin he will disapprove the routes and possibly even the need for the roads; local planning authorities have been pushed on unfairly to make a show on paper—for whose benefit?

Until it is considered what the country can afford on planning, what the priorities are for different classes of proposals and different areas, and until the various Ministries are prepared to approve programming on the footing that the requisite grants will be forthcoming in accordance with the programme, development plans are just sowing doubts and creating stagnation. We are erecting a paper monument to planning, but we are not planning.

Would it be better to have a new technique in planning? The planning authority could have in their private archives

whatever long-term plans they desired to guide them in dealing with applications, but the weight given thereto should depend on the likelihood of their reaching the programming stage. At this stage, plans could be published showing what the authority *undertook* to do in the periods of 5, 10 or 20 years, and the authority would only escape its undertaking with ministerial consent after a public local inquiry. That would bring something far more finite into the plans in place of the airy-fairy never-never proposals of so much of current planning. Plans are being prepared as a statutory duty, but do local authorities really intend to carry them out? Is the Minister likely to use his powers under s. 100 (4) to enforce any major development which might add substantially to local rates?

Planning is a matter of foreseeing and guiding future *actions*. It is not planning to sow doubts and bring *stagnation*.

Section 3 of the Public Health (Buildings in Streets) Act, 1888

By Ronald P. Crompton, m.a., l.a.m.t.p.i.

Deputy Town Clerk of the Borough of Middleton

The Public Health (Buildings in Streets) Act, 1888, in s. 3 provides that " it shall not be lawful in any urban district, without the written consent of the urban authority, to erect or bring forward any house or building in any street, or any part of such house or building beyond the front main wall of the house or building on either side thereof in the same street nor to build any addition to any house or building, beyond the front main wall of the house or building on either side of the same ". Penalties are prescribed.

It has been recognised by the Legislature that the provisions of this Act might not coincide with later views on the requirements of good planning. Model Clause 26 in the Model Clauses issued by the Minister of Health for use in the preparation of planning schemes under the Town and Country Planning Act, 1932, provided as follows: —

> " In any street for which a building line is in operation under this Scheme a person shall not be precluded by section 3 of the Public Health (Buildings in Streets) Act, 1888, from erecting or bringing forward a building beyond the front main wall of a building on either side thereof if the erection or bringing forward of the building would not contravene the provisions of the Scheme, and the operation of the said Section is hereby suspended so far as is necessary for the purpose of this Clause ".

In Sched. II to the Town and Country Planning Act, 1947, the Act is listed as an excepted enactment for the purposes of the procedure relating to the making of development orders, under s. 13. This means in effect that if it is proposed to make provision in any development order for the exclusion or modification of this Act there is no necessity to obtain resolutions of both Houses of Parliament in addition to the order lying on the table of the House for forty days.

It appears, however, that the Legislature contemplate that the provisions of a future order will replace the penal provisions of the 1888 Act. The wording of the relevant subsections of the Act of 1947 is as follows: —

> 13.—(4) For the purpose of enabling development to be carried out in accordance with permission granted under this Part of this Act, or otherwise for the purpose of promoting proper development in accordance with the development plan, a development order may direct that any enactment passed before the passing of this Act, or any regulations, orders or byelaws made (whether before or after the passing of this Act) under any such enactment, shall not apply to any development specified in the order, or shall apply thereto subject to such modifications as may be so specified.
>
> (5) . . . Provided that, without prejudice to the foregoing provision, where any such order makes provision for excluding or modifying any enactment contained in a public general Act (other than any of the excepted enactments specified in the Second Schedule to this Act) the order shall be of no effect until that provision is approved by resolution of each House of Parliament.

It is curious that no such direction is contained in the 1950 General Development Order in view of the fact that in Class I of Part I of Sched. I there is a condition that " no part of such building shall project beyond the forwardmost part of the front of the original dwelling house ". This can be compared and contrasted with the " beyond the front main wall " in the 1888 Act. If a permanent lean-to garage is contemplated which projected to the line of a two-storey bay window, to give an instance, that would satisfy condition 2 but not the 1888 Act.

The position is quite clear but certain difficulties may result. There is no reason why certain development should not be " permitted " for the purpose of the Planning Acts and yet forbidden under the penal provisions of s. 3. The General Development Order excuses only from planning permission. The Order as its name suggests is general. It covers every type of building, it cannot be honeycombed with exceptions, it is not an encyclopædia on the law relating to building lines. The 1888 Act is limited to buildings in streets in urban districts. There may be some advantage in being finicky with building lines in urban areas and after all the local authority have the power to give their consent, so if they withhold it one should assume that they have some good reason for doing so. The distinct nature of the penal statute is shown by the facts of *Blackpool Corporation* v. *Johnson*, [1902] 1 K. B. 646. A purchaser bought a house from a builder who had in building it committed an offence under s. 3. It was held that the purchaser did not commit an offence against the section by maintaining the house, after notice from the urban authority, in the same state as it was when he bought it. Under the General Development Order if

a building is erected as permitted development it enures for the benefit of future purchasers, but if it is erected without permission when permission is required it still remains an unauthorised building subject to enforcement procedure in the hands of a future purchaser.

Possible difficulties are these :—

1. As no mention is made of the 1888 Act in the General Development Order, it would be easy for a developer who does not seek advice to rely on the terms of the Order and to carry out the erection without obtaining the necessary permission.

2. As the development is permitted development no planning permission is required but if an applicant not certain of his position and believing that " assurance is nine-tenths of the law " puts in an application the local authority are faced with a difficulty. In *Mullis* v. *Hubbard*, [1903] 2 Ch. 431, it was held that if a formal consent under bye-laws was given this might be taken to include consent also under the 1888 Act. See also *Merrett* v. *Charlton Kings U. D. C.* (1903), 67 J. P. 417, and *Att.-Gen.* v. *Denby*, [1925] 1 Ch. 596.

The position in respect of bye-laws was amended by s. 64 (2) (ii) of the Public Health Act, 1936.

> " A notice that plans have been passed shall state that the passing of the plans operates as an approval thereof for the purpose of the requirements of the bye-laws and of any such section of this Act as is referred to in the previous subsection."

If the work is carried out without permission as permitted development, the local authority have in no way issued their consent. If plans have been submitted to them and they state that no consent is necessary, it is doubtful whether they are under any obligation to disclose the position under the 1888 Act although in common courtesy they should. If they do issue a formal consent, whether this operates as a consent under the 1888 Act depends of course on whether the planning authority is also the local authority for this purpose. In a county borough it would be, in a borough or urban district the exact position would be dependent on the measure of delegation. There appears to be no authority for refusal of " permitted development " because it contravened the provisions of the 1888 Act but if a formal consent is issued it is advisable that on the face of the consent there should appear distinctly words to the effect that " this does not constitute a consent for the purposes of the Public Health (Buildings in Streets) Act, 1888 ".

Development in Barsetshire

Rent Restricted Properties

The following desultory conversation on the Town and Country Planning Act, 1947, may be assumed to take place during a chance encounter between S., a surveyor, and D.V., the district valuer.

S. You will remember you sent me some weeks ago a Form C.V.121 in respect of my claim against the global sum on the upper part over a shop, proposing to assess a "Nil" development value.

D.V. Yes. Although the upper part which formed your unit of claim was used residentially on the appointed day and it was possible to envisage a change to business user I didn't consider there was any difference between the unrestricted and restricted values.

S. I asked you the reason at the time, and I think you said:—

(a) The rateable value was not more than £75[1] consequently we had a rent-restricted tenant in the building, and were unlikely to get possession to start the business use; or, in the alternative (as the lawyers say),

(b) If we did get possession, owing to the scarcity of dwelling accommodation you thought that the vacant possession value for residential purposes was equally as high as the business value.

D.V. Yes, that was broadly my proposition.

S. At the time I accepted your arguments and didn't lodge a notice of objection on Part II of the form within the prescribed 60 days.[2] Consequently I was rather astounded to hear that you proposed to levy a development charge in a similar case where we have obtained planning permission for the change of use.

D.V. I don't think the circumstances are quite the same. In the first case I had to consider the incidents as at the appointed day, July 1, 1948. At that date the Landlord and Tenant (Rent Control) Act, 1949, had not been passed and you were entitled, on letting the premises for 14 years or longer, to charge any premium or rent you liked.

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[1] No part of Barsetshire is within the Metropolitan Police District or the City of London where the limit is £100.

[2] The 60 days' time limit has statutory force by virtue of Reg. 12 (4) of the Claims for Depreciation of Land Values Regulations, 1948 (SI 1948, No. 902) ([1948] J.P.L. 142); but usually district valuers are prepared to give a reasonable extension of time in cases of difficulty.

S. I appreciate that s. 8 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, which excluded such leases from rent control was repealed by the 1949 Act, but haven't you overlooked s. 12 (7) of the principal Act; that excludes cases where the rent is less than two-thirds of the rateable value.

D.V. I always get into such deep water when I plunge into the Rent Restrictions Acts. There are about a dozen of them, I believe, and I can't pretend to be *au fait* with all their provisions; if in doubt I have to refer to higher authority.

S. You are lucky to have a higher authority to refer to. I have to puzzle these things out myself. Anyway, I think you will find that there is nothing to stop us from letting at a rent which is less than two-thirds of the rateable value and charging a substantial premium.

D.V. You are probably right. At the same time, from the claim point of view you have to consider the depressive effect on the market value for business purposes of Defence Regulation 68CA. When it comes to development charge you have already got over that hurdle.

S. In other words you are again trying to justify the proposition that whilst we are not entitled to any share in the £300,000,000 we have to pay a development charge when we are unlucky enough to get permission to carry out the development which you say had no market value on the appointed day.

D.V. That must happen in many cases because of the differing dates and bases of valuation. To take an extreme, surely you would not say in 1992 that because we said no claim in 1948 you should pay no development charge whatever happened.

S. I might. But harking back to our point, in arriving at development charge s. 69 directs us to have regard to the benefit of the planning permission to *the* land. The Practice Notes, para. 46, indicate that the particular tenancies to which the land is subject are to be disregarded and a notional freehold with possession is to be contemplated, both for Consent Value and Refusal Value. They say "Where there is in fact more than one person interested in the land, it is clear that "the willing seller" cannot be any one of the real owners and must be a hypothetical person who is deemed to own the freehold in possession." That being so I should have thought the Rent Restrictions Acts could be disregarded. There is some justification for

this in the rating case of *Poplar* v. *Roberts* [1922] 2 A.C. 93, where I think it was decided that the rating assessment was not restricted to the controlled rent, despite the fact that it was illegal for the landlord to let the premises at any higher figure.

D.V. You mean that there is no need to think of legitimate means of circumventing the Acts because you are selling a freehold with vacant possession in effect, just as in the case of the sale of an ordinary house in present-day circumstances.

S. Yes. In such a case, although it would be illegal to let at more than, say, £35 a year because that happens to be the standard rent there is nothing to prevent a sale with vacant possession at £3,000 or some similar figure.

D.V. I am prepared to concede your point to the extent of giving you the residential vacant possession value in arriving at the refusal value but I still think the vacant possession value for business purposes exceeds the residential value.

S. I think I will delay coming along to discuss this case with you in detail until I see what amending legislation is brought in.

D.V. It will be interesting to see whether the Act is amended, and, is so, in what respects. I suppose you are hoping for a 75 per cent. or even a 50 per cent. development charge? That would at least give the developer some incentive.

S. I'm afraid I am rather uncompromising in that respect, because I don't think any modified development charge will really work. To my mind there is no halfway house between "no compensation, and no development charge" and "full compensation, 100 per cent. development charge."

D.V. I assume by full compensation you mean not necessarily payment in cash but some such set-off provisions as have already been made in the case of near-ripe minerals.

S. Yes, and whatever form the scheme takes I think change of use of existing buildings should be disentitled to compensation and exempted from development charge.

D.V. That sounds like wishful thinking. Moreover, your "no compensation and no development charge" would amount to a complete abandonment of those parts of the Act.

S. Well, such things have happened before. As one of the few surviving original members of the Valuation Office you will probably recall the similar fate of the 1909–10 Act.

Progress of Development Plans

(*Continued from* [1951] J.P.L. 710)

The following is a continuation of the list of plans submitted to date (December 17, 1951). Any objections should be sent to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before the closing date indicated.

30. Durham County Council.
Local inquiry: February 13, 1952.

34. St. Helens County Borough Council.
Local inquiry: January 16, 1952.

42. Bootle County Borough Council.
Submitted to Minister: November 20, 1951.
(*London Gazette*, November 23, 1951.)
Closing date for objections: January 7, 1952.

43. Warwickshire County Council.
Submitted to Minister: November 30, 1951.
(*London Gazette*, November 30, 1951.)
Closing date for objections: January 15, 1952.

44. Barrow-in-Furness County Borough Council.
Submitted to Minister: November 12, 1951.
(*London Gazette*, December 4, 1951.)
Closing date for objections: January 25, 1952.

45. Lancashire County Council.
Submitted to Minister: November 28, 1951.
Closing date for objections: February 9, 1952.

46. Lincolnshire (Holland) County Council.
Submitted to Minister: November 30, 1951.
(*London Gazette*, December 7, 1951.)
Closing date for objections: January 31, 1952.

47. Wakefield County Borough Council.
Submitted to Minister: December 6, 1951.
(*London Gazette*, December 11, 1951.)
Closing date for objections: January 21, 1952.

48. West Suffolk County Council.
Submitted to Minister: December 7, 1951.
(*London Gazette*, December 11, 1951.)
Closing date for objections: January 26, 1952.

49. Northampton County Council.
Submitted to Minister: December 14, 1951.

3. *West Hartlepool County Borough Council.*

The following is an extract from the letter dated November 9, 1951, from the Minister of Housing and Local Government informing the West Hartlepool County Borough Council of his decision to approve with modifications the development plan submitted by that authority.[1]

" I am to explain, with reference to the central area of the town, that in examining your council's proposals the Minister has had regard not only to the advantages and disadvantages of moving the shopping centre to the west of Stockton Street but also to the difficulties likely to be experienced in carrying out the move and, in particular, to the cost which would be likely to fall on public and other funds. Despite the considerable weight of objections brought forward by trading interests in the town the Minister considers that movement of the shopping centre would effect an important town improvement and he therefore approves the move as an objective and as the broad basis on which the council should administer development control. But it is clear that for a town of the size of West Hartlepool a movement of the shopping area will be a very large undertaking and that the cost might prove very heavy. This will largely depend on the care with which the financial and estate management aspects of the project are taken into account by the council, particularly at the outset, and the Minister feels that these aspects should be more fully considered.

The town map and the programme map associated with it describe in general terms the proposal to move the shopping centre and this the Minister feels able to approve subject to certain modifications. The comprehensive development area map and its programme map go into considerably greater detail and, together with the relevant passages in the written statement, suggest a particular method of implementing the proposal to which the Minister cannot at this stage commit

[1] Far an account of the local inquiry in relation to this plan, see [1951] J.P.L. 30.

himself. He accordingly proposes to set aside the comprehensive development area map and the associated programme map pending further consideration of the way in which the move can most successfully be carried through.

The modifications in the central area part of the programme map for the town map have the effect of relegating most of the proposals for that area to the category of development which is expected to be undertaken and substantially completed during the twenty-first and subsequent years following the approval of the development plan. I am to explain that in making this modification the Minister's object has been to fix the period within which it can reasonably be expected at the present time that the development involved will be carried out. It remains open to the council, however, to submit, as an amendment to the plan, proposals for the comprehensive development of the area, and the Minister wishes it to be understood that the modifications which he has made would not, in that event, preclude revision of the programme in such a way as to speed up the progress of the development. Indeed, the Minister shares the anxiety which will no doubt be felt by the council that an early conclusion should be reached about the method and the programme for carrying out the movement of the shopping centre and he hopes that the council will be able to submit in the reasonably near future such an amendment. To that end he thinks it will be useful for any such proposals to be discussed in the first place by his officers and representatives of the council; and officers of the department would be prepared to participate also in a meeting with representatives of the trading interests if the council thought that this would be useful.

The modifications in the neighbourhood of Throston Grange appear to the Minister to be necessary after full consideration of the agricultural, educational and defence aspects. Those in the neighbourhood of Seaton Carew are necessary in the interests of agriculture. Some further modifications have been made which are of a minor character and do not affect in any significant way the general intentions of the council as set out in the plan."

Statutory Instruments

The Lands Tribunal (Amendment) Rules, 1951

(S.I. 1951, No. 2004)

Made - - - - *November* 16, 1951
Coming into Operation *December* 10, 1951

I, Gavin Turnbull, Baron Simonds, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by s. 3 of the Lands Tribunal Act, 1949,[1] and with the approval of the Treasury in regard to the fee prescribed by these Rules, do hereby make the following Rules :—

1.—(1) These Rules may be cited as the Lands Tribunal (Amendment) Rules, 1951, and the Lands Tribunal Rules, 1949,[2] and these Rules may be cited together as the Lands Tribunal Rules, 1949 and 1951.

(2) In these Rules a rule referred to by number means the rule so numbered in the Lands Tribunal Rules, 1949.

(3) These Rules shall come into operation on the tenth day of December, 1951.

2. In Rule 2, in the definition of " appeal against a determination " the words " under the Act or by virtue of any Order in Council made under section 4 of the Act " shall be omitted.

3. The following sentence shall be added at the end of paragraph (2) of Rule 8 :—

" The registrar shall also inform the appellant of the date on which copies of the notice of appeal were served."

4. In paragraph (2) of Rule 9 for the words " the date of the notice of appeal " there shall be substituted the words " the date of service of the copy of the notice of appeal."

5.—(1) The following words shall be substituted for the introductory words of Rule 10 :—

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[1] 12, 13 & 14 Geo. 6, c. 42.
[2] S.I. 1949 (No. 2263), summarised [1950] J. P. L. 64.

"Where notice of intention to appear has been given to the appellant and either the net annual value of the hereditament to which the appeal relates exceeds £200 or the appeal is on a point of law, the following provisions shall have effect."

(2) The following paragraph shall be substituted for paragraph (iii) of Rule 10 :

"(iii) the appellant shall send to the registrar with his Statement and every such party as aforesaid shall send to the registrar with his Reply :—

(*a*) a valuation of the hereditament (including particulars and computations in support of such valuation) or a statement of the value or values that the parties have agreed to attribute to the hereditament in the event of the tribunal allowing or dismissing the appeal, as the case may be, and

(*b*) a description of any comparable hereditaments to which the appellant or such party as aforesaid intends to refer at the hearing in support of his case,

together with sufficient copies of the documents for service upon each of the other parties to the appeal; and the registrar shall within seven days after receiving all the documents required to be supplied under this paragraph send to each party a copy of the documents supplied by the other parties."

6. The following paragraph shall be added at the end of Rule 11 :—

"(vi) any question (not being an appeal against a determination) which by or under any enactment other than the Act, is in default of agreement to be determined by the Lands Tribunal."

7. The following Rules shall be inserted after Rule 26 :—

"*Default of appearance.*

26A. If, on an appeal against a determination or against the decision of a local valuation court or on an application under Part IV of these Rules, the appellant or applicant does not appear at the time and place appointed for the hearing the tribunal may dismiss the appeal or application, and if any other party to the proceedings or any party to a reference does not appear at such time and place as aforesaid the tribunal may hear

and determine the appeal, application or reference in his absence and may make such order as to costs as it thinks fit."

"*Appellant limited to grounds of appeal.*

26B. On the hearing of an appeal against a determination or against the decision of a local valuation court or of an application under Part IV of these Rules the appellant or applicant shall not be entitled to rely upon any grounds not stated in his notice of appeal or Statement of case or application unless the tribunal thinks it just in all the circumstances, and on such terms as to costs or adjournment or otherwise as it may think fit, to allow such additional grounds to be put forward as may appear to the tribunal to be material."

8. The following Rule shall be substituted for Rule 29 :—

"*Right of Audience.*

29. In any proceedings before the tribunal any party may appear and be heard either in person, or by counsel or solicitor, or by any other person allowed by leave of the tribunal (or by leave of the President or the registrar in the case of an interlocutory application) to appear instead of any party."

9.—(1) The following Rule shall be substituted for Rule 35 :—

"*Application of Arbitration Act*, 1950.

35. Sections 12, 14, 15, 17 and 26 and subsection (5) of section 18 of the Arbitration Act, 1950, shall apply to all proceedings before the tribunal as they apply to an arbitration unless a contrary intention is expressed in the arbitration agreement; and, where the tribunal is acting as arbitrator under a reference by consent, sections 1, 2, 3, 5 and 27, subsection (1) of section 4, subsections (3) and (4) of section 18 and subsections (2) and (3) of section 24 of the Arbitration Act, 1950, shall also apply."

(2) The Second Schedule to the Lands Tribunal Rules, 1949, is hereby revoked.

10. In the Third Schedule to the Lands Tribunal Rules, 1949, paragraph 8(B) shall be amended by inserting after the words "(except on a dispute as to water rates)" the words "or on an application for a certificate of value."

The Mineral Development Charge Set-off Regulations, 1951 [1]

(S.I. 1951, No. 2156)

Made - - - - September 27, 1951

Coming into operation December 4, 1951

[*Summarised—with references to the relevant provisions of the Mineral Workings Act*, 1951]

General effect

The general effect of these regulations is that in respect of minerals to which the regulations apply (which can conveniently be called " near ripe minerals ") development charge will be deemed to be the same amount as the payment from the £300 million fund, and will be set off against that payment. In general, therefore, no development charge will be payable and no Part VI payment will be received in respect of such minerals, and a sale or lease thereof can be made on this basis. This position is subject to modification in particular circumstances, as mentioned below.

Definition of Near Ripe Minerals

The minerals to which the regulations apply are those in which a freehold or leasehold interest was on July 1, 1948, owned by, or subject to an enforceable contract of sale to, a person then engaged in the development of minerals, and in respect of which a claim has duly been made on the £300 million fund and qualifies for a payment therefrom (*reg. 3*).

Central Land Board's discretion

The Central Land Board has discretion:

(a) to admit minerals which although not owned or leased by a mineral undertaker on July 1, 1948, can reasonably be regarded as a mineral undertaker's reserves (*reg. 3 (3)*);

(b) to admit minerals which a mineral undertaker was entitled to work under oral arrangements without any written lease (*reg. 3 (5)*);

(c) to exclude minerals which cannot reasonably be regarded as a mineral undertaker's reserves although owned by a person engaged in mineral development (*reg. 3 (4)*).

[1] Particulars of these regulations as originally drafted were included at [1951] J.P.L. 348–353. The regulations as now made contain many minor amendments of and additions to the original draft regulations, but the main principles have not been altered.

See hereon C.L.B. Pamphlet S.1.A. (Minerals).

Set-Off of Development Charge and Part VI Payments

Section 29 (2) of the Mineral Workings Act, 1951, provides that payments from the £300 million fund shall in the case of near ripe minerals be the full development value thereof.

Such payments will not automatically be paid out on the date (in 1953) to be fixed under s. 65 of the Act of 1947 for the issue of stock in satisfaction of Part VI payments ("the date of satisfaction") but will be withheld until set off against development charge or paid out under particular provisions of the regulations (*reg. 7*).

At a date in 1973—20 years after the date of satisfaction—all payments from the £300 million fund in respect of near ripe minerals which have not by then been set off or previously paid will then be paid out (*regs. 16 and 17*).

Development Charge

Where planning permission for the working of near ripe minerals is granted, or has since July 1, 1951, been granted, the development charge is deemed to be the same as the amount of the payment from the £300 million fund in respect of such minerals, or in a leasehold case the sum of the payments due to lessor and the lessee, and will be set off against such payment(s) (*reg. 8*).

The development charge is deemed to be paid on the date when planning permission is granted, or on the date of satisfaction (in 1953), whichever is the later (*reg. 8 (4)*).

If a payment from the £300 million fund has been issued in respect of near ripe minerals, as in the circumstances referred to below, the regulations cease to apply to the minerals, and thereafter there will be liability to development charge in the normal way (*reg. 18*).

Payments from the £300 million fund

Although Part VI payments will not be issued on the date of satisfaction in respect of near ripe minerals (*reg. 7*), such payments will be issued in the following cases.

(1) *Right to Payment and Ownership of Minerals vested in different persons*

Where the right to receive the payment from the £300 million fund has become vested in some person other than the owner of the minerals—*i.e.*, where either the right or the minerals has been separately assigned—the person entitled to the payment may elect that the minerals shall not be subject

to the regulations. The effect of such election will be that the Part VI payment will be issued in 1953, and development charge will then be payable in the ordinary way. Election is effected by a notice in writing which generally must be served on the Central Land Board within six months from December 4, 1951 (*reg. 4*).

The right of election does not apply where the right to the Part VI payment has been severed from the ownership of the minerals by an assignment or disposition made *inter vivos* after February 14, 1951, unless the approval of the Central Land Board is given (*reg. 4 (3)*). This provision therefore does not afford a method whereby any owner may obtain payment from the £300 million fund in 1953.

(2) *On refusal of planning permission*

Where planning permission for the working of near ripe minerals is refused, the payment from the £300 million fund will be paid out on the date of satisfaction or as soon as practicable after the refusal, whichever is the later (*reg. 9*).

If on a grant of planning permission a condition is imposed requiring some minerals to be left unworked, this will be treated as a refusal of permission in respect of those minerals. If planning permission is granted for a limited period, it will be treated as a refusal in respect of such minerals as cannot reasonably be expected to be worked within the period of the permission (*reg. 9 (3)*).

On a first refusal of planning permission, the claimant has an option to disclaim the Part VI payment, in which case if the permission is granted at a later date the payment will be set off against development charge. At any time after disclaimer the claimant may require the payment to be issued by a notice withdrawing the disclaimer, although in a leasehold case this does not happen unless both parties give such notice (*regs. 14 and 15*).

(3) *Where minerals to be left unworked*

If the person entitled to work near ripe minerals does not intend to work them within the period of 20 years from the date of satisfaction he may apply to the Central Land Board at any time before planning permission for working them has been granted or within six months after a grant of planning permission, and if the Board are satisfied as to that intention the Part VI payment will be issued as if planning permission had been refused (*reg. 12*).

(4) *Where planning permission revoked*

If planning permission is revoked before the date of satisfaction (in 1953) the Part VI payment will be issued. Otherwise the owner would have lost the value of the minerals without compensation (*reg. 10*).

But the regulations do not cover revocation after the date of satisfaction which will be dealt with under s. 22 of the Act of 1947 and the Minerals Regulations, 1948.

(5) *On compulsory acquisition*

If the minerals are compulsorily acquired before the expiration in 1973 of the period of 20 years from the date of satisfaction, the Part VI payment will be issued. Otherwise the owner would receive only the existing use value (*reg. 11*).

Amount of Part VI payment

The amount of the Part VI payment payable under regs. 9 to 12 is governed by reg. 13. The Central Land Board are empowered to determine any dispute as to the amount of a Part VI payment becoming payable under regs 9 to 16. There is a right of appeal to the Lands Tribunal (*reg. 21*).

Apportionment

Where a claim on the £300 million fund is in respect not only of near ripe minerals but also of other minerals or other development, the Central Land Board may apportion the development value in order to ascertain what part is attributable to the near ripe minerals (*reg. 6*).

Assignment of Part VI payment

An assignment of a Part VI payment in respect of near ripe minerals will be effective if notice is given to the Central Land Board within one month after the event giving rise to the payment. This is so notwithstanding the provision in reg. 7 of the Claims for Depreciation of Land Values Regulations, 1948, that notice of assignment must be given to the Board before January 1, 1953 (*reg. 22*).

Modification of Mining Leases

Under s. 30 of the Mineral Workings Act, 1951, a lessor or lessee under a mining lease made before July 1, 1948, may apply to the Lands Tribunal for an order modifying the lease to secure that the sums payable under the lease by the lessee in respect of the period from July 1, 1951, are fair and

reasonable. This provision is necessary in view of the lessee's liability to development charge not being contemplated when the lease was entered into.

Such a provision is not necessary and does not apply in respect of near ripe minerals where the development charge is set off against the Part VI payment. Where a Part VI payment becomes payable, however, *e.g.*, after the 20 year period, or where planning permission is revoked or modified, the provisions of s. 30 of the Act of 1951 are specially made applicable (*reg. 23 and Sched. II*).

Contributions to the Ironstone Restoration Fund

Under the Mineral Workings Act, 1951,[2] contributions are payable to the Ironstone Restoration Fund in respect of the working of ironstone after July 1, 1951, both by the operator who works the ironstone and by the landowner (who may or may not be the same person). The amount of the contribution payable by the operator is normally $1\frac{1}{8}$d. per ton of ironstone extracted (s. 3). The contribution of the landowner takes the form of a deduction to be made from any Part VI payment wholly or partly in respect of open-cast ironstone working of a sum to be determined by a formula in Sched. II of the Act, which will be deducted from the amount payable from the £300 million fund and paid not to the owner but to the Minister (s. 5).

Where ironstone (not being subject to a full restoring lease immediately before February 15, 1951) is near ripe minerals, and development charge and Part VI payment are therefore mutually set off, the rate of contribution payable to the Ironstone Restoration Fund by the person working the ironstone is $2\frac{1}{4}$d. instead of $1\frac{1}{8}$d. per ton. But by s. 6 (2) and Sched. III of the Act if the ironstone is comprised in a mining lease made before August 1, 1951, a deduction of the amount authorised by Sched. III (normally half of the contribution) may be deducted from the payments made by the lessee to the lessor under the lease (unless the lease was made after February 15, 1951, and expressly provides that this provision shall not apply thereto) (s. 6).

Under s. 6 (3) of the Act of 1951 a contribution is not payable out of a Part VI payment which is withheld under the Set-Off Regulations unless and until the Part VI payment or any part thereof is issued, in which case the deduction is

[2] See [1951] J.P.L. 537–8. The 1951 Act provisions apply only to the working of ironstone within the "ironstone district," as defined.

made. Provision is made in the Set-Off Regulations pursuant to s. 6 (4) of the Act of 1951 to secure that where development charge has been set off against Part VI payment in respect of the development of ironstone, and then compensation becomes payable in respect of revocation or modification of planning permission for the development, or in consequence of compulsory acquisition of the land or of any restriction placed upon development, a contribution to the Ironstone Restoration Fund is required to be made, of an amount calculated in accordance with the formula set out in Sched. I to the Regulations (*reg. 20 and Sched. I*).

Miscellaneous Provisions

Recovery of Costs of Complying with Conditions

In certain circumstances, if conditions are imposed where planning permission is or has been granted in respect of the working of near ripe minerals, the cost of any works necessary for complying with the conditions may be claimed from the Central Land Board (*reg. 19*).

Crown Minerals

The regulations do not apply to minerals which are Crown land except to the extent that arrangements for payments in lieu of development charge have been made under s. 88 (2) of the Act of 1947 (*reg. 5*).

Interpretation

Many important expressions are defined by reg. 2, and other expressions defined in the Act of 1947 have the same meaning as in that Act (*reg. 2*).

Town and Country Planning (Development by Local Planning Authorities) Regulations, 1951

(S.I. 1951, No. 2069)

Made - - - -	28*th November*, 1951
Laid before Parliament -	29*th November*, 1951
Coming into Operation -	10*th December*, 1951

The Minister of Housing and Local Government, in exercise of the powers conferred on him by subsection (3) of section 35

of the Town and Country Planning Act, 1947, and of all other powers enabling him in that behalf hereby makes the following Regulations :—

Citation and commencement, and revocation of previous Regulations

1.—(1) These Regulations may be cited as the Town and Country Planning (Development by Local Planning Authorities) Regulations, 1951, and shall come into operation on the tenth day of December, 1951.

(2) The Town and Country Planning (Development by Local Planning Authorities) Regulations, 1948,[1] are hereby revoked: provided that any notification or direction given under Regulation 3 of those Regulations in relation to any development shall continue to have effect under that Regulation, and any application made in pursuance of such a direction may be determined accordingly.

Interpretation

2.—(1) In these Regulations :

"the Act" means the Town and Country Planning Act, 1947;

"the Minister" means the Minister of Housing and Local Government.

(2) The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

Development permissions

3. In relation to the development by local authorities of land in respect of which they are the local planning authority, the provisions of Part III of the Act (including subsection (2) of section 35 and the Fifth Schedule) shall have effect subject to the exceptions and modifications prescribed in the next two succeeding Regulations.

4.—(1) Where the authority require a permission for the development of land which is not granted by a development order (other than a permission for development which does not accord with the provisions of the development plan), such permission shall, subject to the provisions of the next succeeding Regulation, be deemed to be granted by the Minister

[1] SI 1948, No. 2302

unless in the case of any particular development the Minister requires the authority to make an application to him for permission.

(2) If the Minister requires the authority to make an application for permission in accordance with the preceding paragraph, or if the authority seek a permission for development which does not accord with the provisions of the development plan, the application shall be made in the form of an application to the local planning authority, and shall be deemed to have been referred to the Minister under section 15 of the Act, and the provisions of that section shall apply to the determination of the application by the Minister.

(3) A permission deemed to be granted by virtue of paragraph (1) of this Regulation shall be treated as if, for the purposes of Part III of the Act, it had been granted on an application, and as if it had been granted on the date of the authority's resolution to carry out the development.

(4) For the purposes of this Regulation development which does not accord with the provisions of the development plan shall not include such development for which the local planning authority may grant permission by virtue of a development order or a direction given by the Minister thereunder.

5.—(1) Subsection (4) of section 14 of the Act (under which a certificate of the Board of Trade is required in relation to development consisting of industrial buildings) and subsection (5) of that section (which provides for the keeping of a register with respect to applications for permission) shall apply as if an application were required to be made to the Minister under these Regulations and those provisions applied to that application.

(2) The authority shall consult with, or furnish information to, other authorities or persons in any case where, if an application had been made to them in respect of the development, they would have been required to do so before dealing with the application.

(3) Where under the last preceding paragraph the authority are required to consult with any other authority or person, they shall give notice to such authority or person that a proposal to carry out the development is to be considered and shall not resolve to carry out such development except after 14 days from the giving of such notice and after taking into account any representations received from such authority or person.

(4) In any case in which directions have been given to the local planning authority restricting the grant of permission by them, the authority shall observe the terms of such directions in relation to any development prejected by them, or shall make an application for permission to the Minister, accompanied by a statement giving short particulars of such directions, and paragraph (2) of the preceding Regulation shall apply to such application as if the Minister had required it to be made.

Other consents

6.—(1) Where an authority require any consent or approval of the local planning authority under Part III of the Act other than a permission for development, and that authority are themselves the local planning authority to which the application for such consent or approval should be made, such application shall be made to the Minister and his decision thereon shall be final and shall take the place of the decision of the local planning authority.

(2) Where a local planning authority propose to execute or cause or permit to be executed any works for the demolition, alteration or extension of a building listed under section 30 of the Act the notice required under subsection (6) of that section shall be given to the Minister instead of to the local planning authority, and references in that section to the local planning authority shall be construed as if they were references to the Minister.

Delegate councils

7. These Regulations shall not apply to a council to which the functions of a local planning authority have been delegated but any such council shall notwithstanding such delegation apply to the local planning authority for any permission consent or approval hereinbefore referred to and shall give to the local planning authority any notice required under subsection (6) of section 30 of the Act, as if the delegation to the said council had not been made.

Purchase notices and compensation

8. No claim shall be made and no purchase notice served by an authority, in relation to land in respect of which they are the local planning authority, under the following sections and paragraphs of the Act :—

section 19 (which entitles the owner of land, on refusal of permission, to require the council of the county borough or county district to purchase his interest) or that section as applied by a building preservation order;

section 20 (which entitles the owner of an interest in land to compensation on refusal of permission);

section 22 (which entitles a person interested in the land to claim compensation for revocation or modification of a permission);

section 27 (which entitles any person to claim compensation who has suffered damage from an order requiring a use to be discontinued or a building removed);

paragraph (*d*) of subsection (1) of section 28 (relating to provisions for compensation in tree preservation orders);

paragraph (*c*) of subsection (2) of section 29 (relating to provisions for compensation in building preservation orders);

and paragraphs 1 (3), 2 (2), 3 (3) and 4 (3) of the Fifth Schedule (relating to compensation in respect of operational land).

EXPLANATORY NOTE

(*This Note is not part of these Regulations, but is intended to indicate their general purport*)

These Regulations are made under section 35 (3) of the Town and Country Planning Act, 1947, which provides that where a local planning authority owns land, or wishes to develop land, for which it is itself the local planning authority, Part III of the Act (which includes the power of the local planning authority to grant permission to develop land and the power of the Minister to direct a local planning authority to refer any application for such permission to the Minister for determination) shall have effect subject to such exceptions and modifications as are prescribed by Regulations. They replace the Town and Country Planning (Development by Local Planning Authorities) Regulations, 1948 (SI 1948, No. 2302).

The main exceptions and modifications made by the Regulations are—(1) that unless in a particular case the Minister requires an application for permission to be made to him an authority requiring permission to develop land for which they are the local planning authority shall obtain such permission, not on an application to themselves, but on passing a resolution to carry out the development; (2) that any other applications for consent or approval by a local planning authority in relation to land which they own or wish to develop shall be made to the Minister, whose decision shall be final; and (3) that compensation in cases of refusal or revocation of planning permission, and in other kindred cases, shall not be claimed by an authority in respect of land for which they are the local planning authority.

Parliamentary Intelligence

Replies to Questions in the House of Commons

Development Charge

In a written reply to Mr. J. Grimond, who asked if the Government would amend the Town and Country Planning Act so as to abolish the development charge in rural areas, the Minister of Housing and Local Government (Mr. H. Macmillan) said that he was not yet in a position to make any statement about possible amendments of this Act. (November 12, 1951. H.C. Debates, Vol. 493, col. *16*.)

Development Rights

In a written reply to Mr. Black, who asked if proposals would be brought forward for amending or repealing the provisions of the Town and Country Planning Act, 1947, dealing with the compulsory acquisition of development rights, the Minister of Housing and Local Government in his reply referred to the answer given to Mr. Grimond noted above. (November 13, 1951. H.C. Debates, Vol. 493, col. *27*.)

Development Charge

In a written reply to Mr. Nicholls, Mr. H. Macmillan said that the Government were considering the parts of the Act of 1947, relating to compensation, depreciation of land values and development charges. Even if amending legislation were to be introduced it would hardly be possible to do so this session. Anyone with a building licence would be ill-advised to defer starting in the hope that if he waits he may avoid payment of development charge.

Suggested additional Parliamentary Secretary

In the course of a speech in the debate on the reply to the King's Speech, Mr. Thornton-Kemsley suggested that an additional Parliamentary Secretary should be appointed to the Ministry of Housing and Local Government. He said that the Ministry should be strengthened by someone versed in planning law and practice who would be responsible to the Minister for all town and country planning matters. (November 13, 1951. H.C. Debates, Vol. 493, col. 900.)

Central Land Board Practice

Rebuilding and Enlargement " Tolerances "

(C.L.B./42, dated December 6, 1951)

The effect of paras. 1 and 3 of Sched. III to the Town and Country Planning Act, 1947, together with the Exemptions Regulations (S.I. 1950, No. 1233), is to provide an exemption from development charge when buildings are rebuilt, enlarged by 10 per cent. (or by 7,500 cubic feet in the case of houses) or enlarged to a similar extent on rebuilding. The Central Land Board have announced that they will treat as exempt any rebuilding or enlargement within these tolerances provided it takes place within the curtilage as it exists at the time the development takes place.

When the addition of land to the curtilage of a building results in a material change of use of that land, planning permission is required and a liability to development charge arises. Consent value for the purpose of assessing development charge in these circumstances will necessarily be affected by the principles set out above, especially if the curtilage without the additional land is not large enough to allow the carrying out of the full rebuilding and enlargement tolerances thereon.

Rebuilding—other than Dwelling-houses: Third Schedule Rights

(C.L.B./43, dated December 6, 1951)

The Central Land Board have announced that they will regard Sched. III to the Town and Country Planning Act, 1947, as permitting a single building, other than a dwelling-house, to be rebuilt free of development charge as two or more buildings which together comprise not more than the cubic content of the original building, plus any available enlargement tolerance.

Where such a building, or its foundation site, is sold in two or more parts, the purchaser of any part will therefore have the right (provided it has not already been exercised) to rebuild free of development charge on his land a building

not larger in cubic content than that part of the original building which formerly stood upon it, plus any available tolerance.

Leasehold Interest Subject to an Option

The Board have been asked to comment on the basis of valuation for Part VI purposes applicable to a leasehold interest which has the benefit of an option to purchase the freehold interest.

It has been suggested that this constitutes a freehold interest in land for the purposes of Part VI, but the Board do not accept this view and it appears quite clear from section 119 (1) that an option does not constitute an interest in land for the purposes of the Act.

It does seem, however, that an option is an "incident" which may affect the value of the leasehold interest, and falls to be taken into account in appropriate cases if a notional purchaser of the leasehold interest would be likely to exercise the option. It will be appreciated that the factors which affect a purchaser may be different when assessing Unrestricted Value and Restricted Value respectively.

"Near Ripe" Minerals

The Central Land Board have issued a pamphlet—S.1.A. (Minerals)—on "near ripe" minerals with the object of explaining as briefly as possible the Mineral Development Charge Set-off Regulations (S.I. 1951, No. 2156). The Regulations have been approved by both Houses of Parliament and came into operation on December 4 last.

Copies of the pamphlet may be obtained on application from any of the Board's offices.

*Lands Tribunal Decisions**

Compensation for Compulsory Purchase

Bush House (Guide Bridge) Ltd. v. Ministry of Works [1] (November 19, 1951). This was a claim for compensation upon the compulsory purchase of a disused cotton mill at Ashton-under-Lyne, Lancashire, of net floor area 28,945 square yards, and on a site of about four acres. The claimants submitted a valuation of £98,209, based on an estimated rental of £8,700; the acquiring authority's valuation amounted to £57,500, based on an estimated rental of £8,200.

The property had been sold in 1938, when it comprised two mills, for £8,250; in 1939, after demolition of one mill, for £5,250; in 1941, for £9,600; and early in 1947, for £102,000. In May, 1947, it had been put up to auction and withdrawn at £130,000. Notice to treat was served on October 10, 1949.

The Tribunal (J. P. C. Done, Esq., F.R.I.C.S., and Cecil H. Bailey, Esq., B.SC., M.I.C.E., F.R.I.C.S) stated that if for the purposes of calculating the rent under the notional lease under s. 52 of the Act of 1947 a rental in perpetuity were adopted, this would ignore the disregard of investment or long-term value which results from an urgent desire to secure possession, and which is the distinguishing characteristic of the vacant possession market. A speculative value was the true value for the purposes of s. 52 if it was in fact the market value at the time.

Evidence of bids at the 1947 auction was held to be too indefinite to be of value. Subsequent rentals, which aggregated £10,500, tended to confirm that the figure of £102,000 for which the property had been bought in 1947, was the market value, since there was acceptable evidence that the normal investment rate for the type of property was 10 per cent. The existence of mortgages aggregating £100,000 was accepted as some confirmation of that value, and the purchaser

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* Full reports of these cases will be published in *Planning and Compensation Reports*.

[1] Counsel: *Arthur Capewell, K.C.*, and *W. B. Harris*, instructed by Upton, Britton & Lamb, for the claimants; *R. G. C. Davison*, instructed by Duggan, Elton & James, for the first mortgagee; *B. Wingate-Saul* and *E. D. Sutcliffe*, instructed by the Treasury Solicitor, for the acquiring authority.

in 1947 had presumably taken into account the passing of the 1947 Act. The notional rent until January 1, 1954, was therefore taken as five per cent. of £102,000, namely, £5,100 per annum, giving a capital value of £19,400.

The Tribunal adopted the District Valuer's net rental value in perpetuity of £6,925 in October, 1949, declining to £6,580 by January 1, 1954. They capitalised this figure on a 10 per cent. basis as adopted by the District Valuer (as against the claimants' seven per cent. basis), the value of the reversion being £44,086.

The total capital value was accordingly £63,486, and making some allowance for the fact that a purchaser could build another mill on the site without liability to development charge, the Tribunal assessed the compensation at £66,000, the acquiring authority to pay the claimants' costs.

Monson v. Surrey County Council [2] (November 28, 1951). This was a claim for compensation for the compulsory purchase of 0.5 acre of agricultural land and 0.08 acre of land, being half the width of a strip of road, 180 ft. long, to which the agricultural land fronted.

The Tribunal (ERSKINE SIMES, Esq., K.C., and J. P. C. DONE, Esq., F.R.I.C.S.) did not accept contentions of counsel for the claimant (*a*) that since the strip of road had been developed before the Act of 1947 was passed, no vendor could be presumed to be willing to sell it unless recouped the cost of the works; (*b*) that since s. 79 of the Act of 1947 provided for the payment of compensation for abortive works, the value of such works had not passed from the claimant to the Central Land Board, and since the value of such works would be excluded in assessing development charge, compensation should be paid in respect of such works by the acquiring authority; (*c*) that a willing vendor could in any case expect to receive, in addition to the value of the land, an amount equal to the sum by which his liability for road charges might be diminished in view of road works having been executed.

The first two contentions were rejected because under the assumptions required to be made by s. 51 of the Act of 1947 the market value of the land would have no relation to the cost to the claimant of the land and the works thereon. The

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[2] Counsel: *D. P. Kerrigan*, instructed by Mole, Rosling and Vernon, Reigate, for the claimant; *Eric Blain*, instructed by the Clerk of the Surrey County Council, for the acquiring authority.

third contention was rejected because no liability for road charges could fall on the owner of the road, nor, on the assumption, under s. 51, that the land continued to be used for agricultural purposes, on the owner of the land fronting thereto.

On the basis of £100 per acre, compensation was assessed at £58.

King Flats (Great Yarmouth) Ltd. v. Norwich County Borough Council [3] (December 3, 1951). This was a claim for compensation upon the compulsory purchase of a plot of land in Norwich, 97 sq. yards in area, the site of two former war-damaged shops, situated in the main shopping centre of Norwich. The compulsory acquisition was pursuant to a purchase notice served by the claimants after permission to develop the land had been refused. Notice to treat was deemed to be served on November 6, 1950. The claimants had themselves purchased the land in 1950 for £9,000.

The claimants claimed £17,100, submitting a valuation by the residual method based on estimated rental values totalling £1,470 p.a., capitalised at 20 years' purchase (£29,000) with deductions of cost of development and developer's profit (£9,990) and on account of the notional lease under s. 52. The acquiring authority's valuations amounted to £9,000, based on prices of £90 per sq. yard for 97 sq. yards, or £320 per ft. for 28ft. frontage, these prices being based on sales of sites near the land in question.

The Tribunal (CECIL H. BAILEY, ESQ., B.SC., M.I.C.E., F.R.I.C.S.) did not accept that the residual method of valuation was a proper one in this case. The site had been bought in the open market at about the time of the notice to treat and the price of £9,000 was supported by the amounts paid for other similar sites in the vicinity.

Compensation of £9,000 awarded, the claimants to pay the acquiring authority's costs.

Cook's Administrators v. Maidstone Waterworks Co. (September 7, 1951). This was a reference for the assessment of compensation on the compulsory purchase of 3 acres of agricultural land at Detling, Kent. Notice to treat was dated July 31, 1950.

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[3] Counsel: *Harold Willis*, instructed by Ruddock & Middleton, Great Yarmouth, for the claimants; *Geoffrey Lawrence, K.C.*, instructed by the Town Clerk of Norwich, for the acquiring authority.

The claimants had in correspondence claimed a value of 30s. per foot frontage, later reduced to 20s. per foot, on the basis that they were entitled to the building value of the land subject to transferring their claim under Part VI of the Act of 1947 to the acquiring authority. They did not appear and were not represented at the hearing. The land was occupied by a person under a verbal licence, but that occupation was terminable at any time, subject to the payment of tenant right compensation.

The Tribunal (J. P. C. Done, Esq., F.R.I.C.S.) accepted the evidence of the valuer for the acquiring authority that the value of the land, which was comparatively unproductive, was £80 per acre after allowing for tenant right estimated at £5 per acre. Compensation was accordingly assessed at £240, and the claimants were ordered to pay the authority £15 15s. 0d. costs.

Claims for Loss of Development Value

Stace v. Central Land Board (November 29, 1951). This was an appeal against a determination by the Central Land Board that there was no development value in the claimant's premises. These were in North Kensington, London, and comprised a stable on the ground floor and three rooms a wash-house and w.c., formerly used for residential purposes but vacant for some years, on the upper floor.

The claimant had applied for permission to alter the premises and use them for bottling vinegar. He had been informed that this would attract development charge, and had assumed that this indicated that there was development value for the purposes of a Part VI claim.

The Tribunal (J. P. C. Done, esq., F.R.I.C.S.) stated that in calculating unrestricted value for the purposes of Part VI the claimant was not justified in assuming that he would have been able to carry out the contemplated development. It was necessary to consider whether, apart from the 1947 Act provisions, the use could justifiably have been prohibited, and, if not, whether a purchaser would therefore have been prepared to pay more for the property. In fact the chances of receiving consent to a change of use were very remote and would have added little to the value of the property. Apart from the 1947 Act the most advantageous use of the property would be as a garage with dwelling over, and there was no development value.

Appeal dismissed. Appellant to pay Central Land Board's costs.

Scottish Cases

Taylor v. Central Land Board (October 24, 1951). A claim was duly made under s. 55 [4] of the Town and Country Planning (Scotland) Act, 1947, in respect of a cottage at Burntisland. In December, 1950, the Central Land Board sent to the owners a notice stating that it was proposed to determine that there was no development value in the owners' interest in the land. The owners signed Part 1 of the form stating that they agreed there was no development value in the interest, and returned it to the District Valuer. They had not signed Part 2 of the form which was a form of notice of appeal.

On March 7, 1951, the Central Land Board had notified the owners that they had determined that there was no development value in the interest.

The Arbiter (J. Edward Morgan, Esq.) held that having regard to reg. 13 (1) of the Claims for Depreciation of Land Values (Scotland) Regulations, 1948,[5] the appeal was incompetent and should be dismissed, each party paying one-half of the Arbiter's fees and expenses.

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[4] Corresponding to s. 58 of the Town and Country Planning Act, 1947.
[5] S.I. 1948, No. 907. Cf. reg. 13 of S.I. 1948, No. 902.

Correspondence

To the Managing Editor,
Journal of Planning Law.

Sir,

Protected Tenants and Compulsory Purchase

My comments on the point raised in the letter published in the Journal in November [1] are as follows:—

In my view the service of a notice to treat upon an occupier who is a statutory tenant at the date of service in no way alters his position or rights. At the date of service the statutory tenant has no interest in the land and there is nothing for which the acquiring authority has to treat. An occupier cannot claim compensation for disturbance, unless he has an interest in land at the relevant time, such compensation being only part of the value of his interest (*Horn* v. *Sunderland Corporation* [1941] 2 K.B. 26).

The position of a protected tenant who is served with a notice to treat, while still a contractual tenant, raises more difficulty. If he is disturbed before his contractual tenancy comes to an end, he is of course entitled to compensation including compensation for disturbance and there does not appear to be any material difference between the measure of compensation under ss. 49 and 63 and under s. 121 of the Lands Clauses Consolidation Act, 1845. The question of the appropriate tribunal under that Act no longer arises except in rare instances, since the Lands Tribunal exercises jurisdiction under all three sections.

If, however, the contractual tenancy comes to an end before the tenant is disturbed, and the tenant has taken no steps to have compensation assessed in pursuance of the notice to treat, it appears that the tenant will not be entitled to compensation. (*Ex parte Merrett* (1859) 2 L.T. 471, and *cf. R.* v. *Kennedy* [1893] 1 Q.B. 533.) It is clear from *Kennedy's Case* that if the tenant has more than a year of his tenancy to expire at the date of the notice to treat, he is entitled to refer the question of compensation to the appropriate tribunal immediately and have the value of his tenancy assessed together with compensation for disturbance. *Merrett's Case* indicates that if at the date of the notice to treat, the tenant is a minor tenant he would not be entitled to have compensation assessed under s. 121 unless he were also disturbed before the end of his tenancy, and although there is no direct authority on the point, it would appear that such a tenant would if not disturbed before the end of his tenancy have no right to compensation at all, except possibly for a change in the nature of his tenancy arising from the service of notice to treat (*cf. Cranwell* v. *Mayor of London* (1870) L.R. 5 Ex. 284).

The fact that a protected tenant is a trader does not affect the position, except that his claim for disturbance, if tenable, is likely to be greater than that if he is a mere resident, and that conceivably a tenant who had been got rid of by notice to quit might be entitled to some compensation from the landlord under the Landlord and Tenant Act, 1927.

Yours sincerely,

Lincoln's Inn. R. D. Stewart-Brown.

[1] [1951] J.P.L. 664.

Planning Decisions

Summary of Bulletin of Selected Appeal Decisions, Bulletin No. 10

The following is a summary of Selected Appeal Decisions, No. 10, July, 1951, issued by the Ministry of Local Government and Planning.[1]

Extension of factory on land forming part of the curtilage of two dwelling-houses

The local planning authority had granted permission for the extension of a factory over a site forming part of the back gardens of two old cottages, subject to the condition that the building should be removed and the land reinstated after 10 years, since it was proposed to include the site in a residential zone under the development plan.

The Minister refused permission for the extension altogether since the factory was a non-conforming use in an area containing much residential property, and the extension would involve encroachment on land in residential use and would intensify the injury to the amenities of the occupants of the cottages (X/1).

Extension of factory over land forming part of internal communication road on trading estate

The Minister allowed an appeal against the refusal of the local authority to permit an extension of a factory in a trading estate in Wales. Permission had been refused on the grounds that the proposed building was to be erected on land laid out as a road and would interfere with the free movement of internal traffic on the estate. The Minister said he appreciated the need for control over the development of industrial estates, but flexibility of construction and layout were desirable (X/2).

Erection of wholesale vegetable warehouse and offices in central area of city

The local authority had refused permission for the erection of a modern two-storey vegetable warehouse and offices to

[1] Published by H.M. Stationery Office, price 6d. net. For summaries of earlier Bulletins, see [1948] J.P.L. 79, 501, 504; [1949] J.P.L. 45, 415, 691; [1950] J.P.L. 509, 837; [1951] J.P.L. 230.

replace an existing three-storey building at present used for that purpose, on the grounds that this would result in the whole site being built upon and part of the site was required for road widening.

The Minister dismissed an appeal against this decision, but since the use would not contravene the development plan proposals he stated that this was without prejudice to the submission of a further application in respect of the part of the site which would not be required for widening the road (X/3).

Erection of industrial laboratory and offices on site formerly occupied by houses

The local authority had refused permission for the erection of a building to be used as an industrial laboratory and offices on a cleared site in a residential area which contained a few small industrial undertakings.

The appellants' existing premises were situated behind the houses in this road and in view of increasing business, which was of national importance, they had asked for permission to use the site in question for ten years only, with a view eventually to moving the whole business elsewhere.

As the existing workshops could not readily be moved elsewhere at present, and no new industry would be introduced into the borough, and since the proposal would increase the efficiency of the business which was of importance to the export trade, the Minister allowed the appeal subject to a time limit of 10 years and to the design and siting being approved (X/4).

Erection of licensed premises on land proposed to be reserved for community centre

The Minister allowed this appeal against a refusal by the local planning authority to permit licensed premises to be erected on a corner position where two roads from a residential estate joined a trunk road. Permission for this use of the site had been granted in 1937, and there were other and better sites available for a community centre, the use for which the council wished to reserve the land (X/5).

Erection of shops on corner site abutting main traffic route

The local planning authority had refused to grant permission for the erection of ten shops with living accommodation

over, some three miles from the centre of a coastal town on a right-angled bend in the main road.

The Minister did not consider there was sufficient injury to amenity to justify refusal of permission, but he dismissed the appeal because traffic considerations would require a service road for which no provision had been made and which it was unlikely could be provided in the available space (X/6).

Erection of dwelling-house on trunk road at end of village

The Minister dismissed an appeal against a refusal to permit the erection at one end of a village of a dwelling-house and garage fronting on the trunk road which ran through the village, because if any further houses were built without a service road being provided to restrict the number of points of access to the trunk road there would be increased danger to traffic thereon (X/7).

Use of backland in proposed residential area as site for twelve caravans

The local planning authority had refused permission for a site for twelve caravans in a partially developed woodland area. They contended that the accommodation would be sub-standard and stated they had authorised a number of camp sites.

The Minister thought the council's attitude was a reasonable one, and dismissed the appeal on the ground that the site was unsuitable for this type of development (X/8).

Retention of holiday caravan during winter months

The Minister dismissed an appeal against a condition requiring the use of land as the site for a caravan to be discontinued after September 30, 1950, in view of the detriment to rural amenities which would otherwise result (X/9).

Placing of caravan for use as separate dwelling in curtilage of bungalow in rural area

The Minister dismissed an appeal against a refusal to allow a caravan for occupation as a separate residence to be placed on the edge of the curtilage of an existing bungalow in a rural area. It was represented by the local authority that the caravan would be a sub-standard dwelling and the neighbourhood had already suffered from this form of development (X/10).

Retention of movable dwellings in connection with agricultural use of land

The local planning authority had refused permission for the retention on a smallholding of two caravans used as living accommodation by the owner of the holding and his son, and also for a double-deck bus body occupied by a man who gave part-time assistance on the holding.

Having regard to the use of the land and the need for living accommodation there, and to the fact that the owner had stated he would erect a permanent house if a building licence could be obtained, the Minister granted permission for retention of the two caravans for a period of one year in the first instance. He dismissed the appeal in respect of the bus body (X/11).

Use of two caravans for dwelling purposes pending erection of permanent dwelling

The Minister on appeal granted permission, limited to three years in the first instance, for the retention of two caravans in an area likely to be zoned for residential purposes, pending the erection of a permanent dwelling-house on the site, for which planning permission had been granted but a building licence was not available.

A condition was imposed that the two caravans should be used as one dwelling only (X/12).

Conversion of four-bedroom house into two self-contained flats

The local authority had refused permission for the conversion of a semi-detached four-bedroom house into two flats, on the grounds of injury to amenity and because the area consisted predominantly of single dwellings.

Whilst agreeing that generally this type of house was more suitable for single family occupation the Minister allowed the appeal in this case since satisfied that the house was sufficiently large and suitable for conversion, and the flats were urgently required (X/13).

Erection of private garage in garden of dwelling-house

Before the General Development Order, 1950, came into operation, a local authority refused permission for the erection of a private garage in the garden of a dwelling-house, because of the danger to traffic which would result. They subsequently determined that the development was not within

class I (1) of the 1950 Order because it would lead to obstruction of the view of persons using the road, thus contravening one of the standard conditions.

The Minister stated that he was advised that the obstruction contemplated by the condition must relate to the development itself—*i.e.*, to the garage, not the vehicles using it. He determined that this was permitted development under the General Development Order (X/14).

Use of building for housing diesel generator

On appeal, the Minister determined that the installation in a shed at the back of a building used for the manufacture of shirts and ties of a diesel generator to supply electricity during failure of the main power supply, did not constitute development in view of s. 12 (2) (*a*) of the Act and the exclusion of plant inside a building from the definition of " building " in s. 119 (X/15).

Section 17 Determinations

Enclosure of timber storage shed and installation of circular saw

A one-storey open-sided shed was used for storage purposes in connection with a retail trade in small timber and timber articles.

The Minister on appeal stated that the installation of machines in a building did not constitute development in itself although it might be associated with a material change in the use of the premises. He held that the operation of a circular saw and planing machine for the purpose of preparing timber for retail sale on the premises would be ancillary to the present use of the building and would not involve a material change of use. He held that the enclosure of the open-sided shed would amount to development, but as it would not injure amenities he granted permission therefor (X/16).

Alteration of appearance of shop premises by erection of standard shop front

The Minister held that the removal of an early Victorian shop front of painted deal and its replacement by plate glass show windows and a fascia of the standard design used by the firm involved a material alteration in the appearance of the building, for which planning permission was necessary.

On the merits of the case the Minister decided that the types of shop front proposed were not in keeping with the character of the particular town, and he therefore dismissed the appeal against the refusal of planning permission by the local authority (X/17).

(This decision was previously reported at [1950] J.P.L. 846.)

Class of use of individual buildings determined by class of use of property as a whole

A number of buildings which had been used for different activities—*viz.*, retail shop, granaries and warehouses, retail milk business, furniture removal business and repository—but had comprised an undertaking owned and operated as one unit, were subsequently let and occupied separately.

The Minister on appeal held that where buildings formed an integral part of a comprehensive unit their use was determined by the use of the unit as a whole. In this case that use had been as a wholesale and retail distributing business and ancillary storage purposes. The use of two of the buildings for light engineering constituted a material change of use for which planning permission was required (X/18).

Use of house as two separate dwellings

The Minister held, on appeal, that where a single private dwelling-house became occupied by two families, with separate living accommodation and cooking facilities for the exclusive use of each family and the installation of separate meters, and joint use of the entrance hall and bathroom, the building was being used as two separate dwellings within the meaning of s. 12 (3) of the Act, and there was a material change of use for which planning permission was required.

The Minister stated that although physical division into separate units was an important factor, such division was not in his view essential for the purpose of creating separate dwellings within s. 12 (3) (X/19).

Change of use from dwelling-house to offices

Where interim development permission for change of use from dwelling-house to offices was granted in June, 1948, and the new use was not commenced until December, 1949, the Minister confirmed the determination of the local planning authority that the change of use in 1949 did constitute

development, the granting of permission in June, 1948, not itself operating as a change of use. That permission was continued in force by s. 77 of the Act of 1947, and s. 78 did not apply to the making of a change in use (X/20).

Use of restaurant for manufacture of potato crisps for wholesale distribution

The Minister held, on appeal, that the use of premises which had been a fish and chip shop for the manufacture of potato crisps for sale otherwise than by retail from the premises was a separate industrial process which constituted a material change in use requiring planning permission (X/21).

Use of lock-up shop as branch insurance office

The Minister held, on appeal, that the use of a lock-up shop in a shopping area as a district office for an insurance company was a material change of use for which planning permission was required (X/22).

Use of additional part of dwelling-house as bank premises

Where a bank had for many years used one room of an eight-roomed house as a branch office, the Minister held that conversion of an additional room in the residential part of the house to provide an interview room and lavatory accommodation for the staff of the bank, would constitute a material change of use for which planning permission was required [X/23).

(This decision was previously reported at [1951] J.P.L. 175.)

Notes of Planning Decisions*

Use for Garage of Land Required for Educational Purposes, Where an Enforcement Notice Served

The following is an extract from the letter of the Minister of Local Government and Planning dated June 25, 1951, following an appeal against the refusal of the Bushey Urban

* The Managing Editor desires to express his thanks to those who have been kind enough to send to this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

District Council to permit the continued use of a building on the Bushey Hall Estate as a repair garage.

"The Minister notes that an enforcement notice has been served on the appellant requiring the discontinuance of the use under appeal. The question whether such use constitutes development for which permission is required under the Act is therefore one to be settled in the appropriate Courts, and the Minister will accordingly deal with this appeal on its merits.

The Minister understands that the site in question is wanted for educational purposes and that it will probably be developed for these purposes within the very near future.

On the other hand, the Minister notes that there was no objection on amenity grounds to the continued use of the premises under appeal for garage purposes.

In these circumstances the Minister has decided that, in order to avoid prejudicing the educational proposals for the area, his proper course is to allow the appeal for a limited period at the expiry of which the position can be reviewed if the land has not been acquired by then for educational purposes.

Accordingly, the Minister allows the appeal to the extent that he hereby grants permission for the continued use of the building in question as a repair garage for a period of two years from the date of this letter."

[By courtesy of the County Planning Officer, Hertfordshire County Council.]

Erection of Ice-cream Kiosk on Forecourt in Seaside Town

The Minister of Local Government and Planning has announced his decision in an appeal against the refusal of Margate Borough Council to permit an ice-cream kiosk to be built on the forecourt of 11 Marine Gardens, Margate.

Permission was refused on the grounds that forecourt trading in Margate was at present largely confined to Marine Terrace and should not be allowed to spread to other areas. The Minister considers that the character of Marine Gardens is already essentially similar to that of Marine Terrace, and that the erection there of a kiosk for the sale of ice-cream would be no more undesirable than one in Marine Terrace.

He therefore grants permission for the erection of such a kiosk until the end of September, 1954. So as not to add to the congestion on the pavement outside it, however, the Minister stipulates that the front of the kiosk shall be set back three feet from the pavement. He also makes it a

condition that the design and appearance of the kiosk shall be agreed with the council or himself on appeal.

[By courtesy of the Public Relations Officer, Kent County Council.]

Mineral Workings Not Amounting to Development

The following is an extract from the letter of the Minister of Local Government and Planning dated September 29, 1951, following an appeal against the determination by the Cheadle Rural District Council that the removal of clay for brick manufacture from deposits of material obtained from Dilhorne Pit would constitute development.

" The brickworks were started in 1919, with the intention of manufacturing bricks from clay won direct from the adjoining colliery. After a time it was found that weathered material was more suitable for brick manufacture. Accordingly, the colliery deposited materials suitable for brickmaking on to this tip for weathering and subsequent use by the brickworks, and that material has been worked continuously since 1919. Unsuitable material was deposited on a separate site elsewhere.

The Minister takes the view that minerals must be in or under land before their working can be regarded as a mining operation. Moreover, he does not consider that the mere removal of chattels deposited on the land can be regarded as constituting any of the other operations which, under s. 12 (2) of the Act, fall within the definition of development. It is, therefore, necessary to consider whether the minerals have become part of the natural surface of the land, or whether they still remain, as they were at the time of their deposit on the land, materials of the nature of chattels. On the evidence submitted on behalf of the company, the Minister is satisfied that the material now being used was specially deposited for brickmaking and has been so used continuously for many years. He has come to the conclusion that notwithstanding any assimilation to the surrounding land which may have occurred in the weathering of the deposits, they have retained their chattel character and have not become part of the land.

The Minister determines, therefore, that the operations in question do not constitute development within the meaning of the Act."

[By courtesy of the Clerk of the Staffordshire County Council.]

Book Review

The Law and Practice of Town and Country Planning. By Percy Lamb, K.C., and Montagu Evans, M.C., F.R.I.C.S., F.A.I., M.Inst.R.A. Published by Staples Press, Ltd. 899 *plus* xvi. Price 63s. net.

This large and attractive volume is a comprehensive account of the law relating to Town and Country Planning and allied subjects, such as Housing, Highways, etc., and includes some useful comments on valuation of land for various planning purposes.

Having stated the field covered by the book, we are compelled to admit that it is not well arranged or imaginatively written; it is certainly not just another print of the Acts with annotations, but we doubt whether the work will be of much real assistance to those professionally concerned with the subject. The book takes the form of a narrative account of the law, being in the main a paraphrase of the wording of the various statutory provisions, arranged in a logical order, but there is no real attempt made to distinguish between the *ipsissima verba* of the Acts and Regulations and the commentary of the learned authors—where sub-headings are used, they tend to be confusing, and the page heading remains the same throughout. Further, with the exception of some of the more important provisions (scattered throughout the book), there is no print of the 1947 Act itself. (It does not appear at all in the Table of Statutes.) Very little assistance is given to the lawyer who requires the actual words used by Parliament together with a reasoned guide through the morass; difficulties such as the interpretation of ss. 23 and 24, the conveyancing effect of the Act of 1947, and the famous "use-title" controversy, are not dealt with at all, and the citations of case law are few in the extreme (a Table of Cases was clearly not necessary), and such case references as there are, are unorthodox.

Surveyors will, however, find much more of interest to them in the work—the narrative seems accurate and will normally be adequate for their needs—the extensive notes on and examples of valuations will be of considerable assistance. In particular, we have not before met such useful calculations of Part VI claims, development charges and assessments of compensation on compulsory acquisition in a book of this nature.

The first Appendix consists of a print of relevant sections from a variety of statutes, chosen somewhat piecemeal, the value of which is not obvious, as it is not often advisable to construe a single section of an Act of Parliament divorced from the context of the whole statute, including its definition section. The selection of Official Publications and Memoranda also seems to have been a trifle haphazard, although the Central Land Board's Practice Notes certainly deserve their inclusion, especially as the work has a bias on the valuation side.

Although we have not had an opportunity of testing the book to any considerable extent in practice, we rather feel it will not be easy to find what is required in any particular instance (although the answer to the problem may well be there); the index is slight, and there is but little cross-referencing to the various portions of the book (*e.g.*, there is no link between the commentary on the Forestry Acts and that on tree preservation orders). Printer's errors seem to be very few, although a strange judge is referred to on p. 595. The preface is dated February, 1951, and the text seems to be accurate to the end of 1950.

J. F. Garner.

Ministry of Housing and Local Government Circulars

[*Continued from* [1951] J.P.L. 401]

Circular No. 52/51, dated August 2, 1951. Control of Advertisements: Challenge to existing Advertisements. [2d.] *See* [1951] J.P.L. 543.

Circular No. 60/51, dated October 5, 1951. Tree Preservation Orders. [4d.] *See* [1951] J.P.L. 656.

Circular No. 63/51, dated December 4, 1951. Development by Local Authorities and Statutory Undertakers. [2d.] With Explanatory Memorandum [4d.].

Practical Points

All questions for consideration should be addressed to "The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of replies.

344. *Mineral workings—landlord's position.*

Since before the Town and Country Planning Act, 1947, came into operation, and at the present time, a limestone quarry has been worked under an agreement by which the landowner receives a royalty. He is about to give notice to his tenant to terminate the present agreement, and a company is to be formed to work the quarry with which the present tenant has no connection whatever. The question to be considered is the effect of the Act of 1947 on such a proposal. The landowner states that he lodged a claim under the Act but it is not known whether anything has been done in connection with such claim.

As the quarry was in existence at the date when the Act came into operation may it be assumed that the new company can work it as the present tenant is working it and pay royalties to the landowner on whatever basis may be agreed between the parties? Is it necessary to give any notice of intention to work by the new company to any local or other authority? We should add that the new company will probably not begin operations at the quarry before April 1, 1952, and that the present tenant will continue until that date. [T. B. & L.]

ANSWER

At first glance the problem appeared to come within the somewhat broad statement made in the White Paper[1]: "A sale or lease of minerals to which the (Mineral Development Charge Set-Off) Regulations apply can be on the footing that the purchaser or the lessee will not have to pay any development charge for working the minerals." It is not entirely clear, however, in the present case,

[1] Cmd. 8217; [1951] J. P. L. 349.

whether the minerals do come within the Regulations, although I think the implication is that they do in so far as at the appointed day they were being worked by the mineral undertaker; I think the doubt is whether the mineral undertaker had an interest within the meaning of the Regulations and the Act. It is noted that the landowner at least had made a claim under Part VI of the Act, and if the Central Land Board had treated the minerals as coming within the near ripe scheme, they would normally have sent form S.14 to the undertaker, and it would not then have been necessary to pay development charge for the working of minerals after the expiry of the three-year moratorium. Perhaps this has in fact already been done, but it is not clear from the information given that the Board have accepted the minerals in question as being near ripe.

As to planning permission, as mineral working is a continuous *operation* the fact that minerals were being worked on the appointed day did not of course confer an existing use right, and strictly speaking an application should have been made for planning permission to continue to work the minerals—unless such permission had been obtained since July 21, 1943, and was still in force. It may be that this has already been done by the present tenant, and if his planning permission is unconditional and not personal to him, then there is nothing to prevent a new tenant continuing to work the minerals under the terms of the permission which would enure for the benefit of the land. If, however, he has not obtained permission—as to whether he has or not could no doubt be ascertained at the offices of the local planning authority—then it will be necessary to apply for permission to regularise the position. [W. F. O.]

345. *Planning permission and development charge—change from auctioneer's to solicitor's office.*

I am proposing to open a branch office as a solicitor at premises which for the past six years have been used and occupied by an auctioneer, valuer and estate agent. It appears to be perfectly clear that no development charge is payable and it also seems to me that application for planning permission in respect of the change of user is unnecessary.

I appreciate that if there is any doubt application may be made to the local planning authority as provided by s. 17 to determine whether planning permission is required, but I do

not wish to take this course unless it is necessary or desirable. [D. & F.]

ANSWER

An estate agent's office was held by the Minister to be in class I (Shop) of the Use Classes Order under s. 12 (2) (4) ([1949] J. P. L. 598) presumably on the ground that it falls within that part of the definition of " shop " which reads " or otherwise appropriate to a shopping area ". It is also clearly an office as its name implies and is, therefore, within class II. There is nothing which says that a building cannot be within both classes (cf. definition of " industrial building " in art. 2 of the Order). Planning permission seems therefore not to be required and hence no development charge would be payable even apart from exemption 3 (3) of the Development Charge Exemptions Regulations, 1950.

See, however, Bulletin of Selected Appeal Decisions X, No. 22,[2] where the Minister seems to have begged the question by finding that an insurance office was an office and not to have considered whether it was appropriate to a shopping area. One has the feeling that the Minister sometimes overlooks that decisions under s. 17 are decisions on points of law and are not questions on which a policy decision can properly be given. [W. A. L.]

346. *Purchase notice—date of transfer of liability.*

With reference to Practical Point No. 323 [3] we should value your opinion on the following somewhat similar facts.

Following the dismissal of an appeal against refusal by the local authority to approve our plans for the development of a site, we served a purchase notice under s. 19 of the Act, which has been confirmed by the Minister. The land is freehold, subject to perpetual ground rents, and we have contended that, with effect from the date of approval by the Minister of the purchase notice, the responsibility for discharging the ground rents devolves upon the acquiring authority, whilst the Town Clerk contends that, until a conveyance is completed, such responsibility devolves upon us. We would add that the compensation offered is less than one year's ground rent, and that some time may elapse before a conveyance of the land is completed. [H. B.]

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[2] Noted *ante*, p. 56.
[3] [1951] J.P.L. 496.

ANSWER

When a purchase notice has been served and confirmed, the effect is that a notice to treat is to be deemed to have been served by the acquiring authority on such date as the Minister has directed (or if no date is specified, presumably on the date of confirmation): see s. 19 (2) of the 1947 Act.

A notice to treat does *not*, however, operate so as to vest the freehold or other the estate of the owner in the acquiring authority, and, therefore, in my opinion, the owner is quite clearly responsible for payment of the ground rents until the legal estate is vested in the acquiring authority; *London County Council* v. *Montague Burton*, [1934] 1 K. B. 360, is to some extent in support of this view. [J. F. G.]

347. *Restrictive covenant against conversion into flats.*

We are acting for a client who proposes to convert her present dwelling-house into two residential flats, and under the provisions of her title deeds there is a restriction which reads: " and also that he and they shall not nor will at any time hereafter use or occupy or permit to be used or occupied the said dwelling-house for any purpose other than a private dwelling-house ". It seems quite clear that the proposal is a breach of this covenant, and that it will be necessary, if the matter is to be proceeded with, for application to be made under s. 84 of the Law of Property Act, 1925, for a removal of the restriction. Can you please confirm this?

Planning permission has been obtained from the local authority but we take it that this fact does not affect the matter, and that there is no statutory authority which will enable the work to be carried out in defiance of the covenant. [W. T. & E.]

ANSWER

I agree that the conversion of the house into two or more flats would be a breach of this covenant: see *Rogers* v. *Hosegood*, [1900] 2 Ch. 388, and *Chatsworth Estates* v. *Fewell*, [1931] 1 Ch. 224; also the fact that planning permission has been obtained for the proposed development in no way affects the position under the restrictive covenant.

Where, however, it is proposed to let the two flats, as planning permission for the conversion has been obtained, it may be possible to apply for the waiver of the covenant by the county court, under s. 163 of the Housing Act, 1936, as amended by s. 11 of the Housing Act, 1949. [J. F. G.]

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"Planning Law" Notes

This issue of the *Journal* is to a large extent concerned with development plans, which are at the present time the subject of considerable interest throughout the country.

Apart from the information regarding the public inquiries included under the heading "Progress of Development Plans" (*post*, p. 95), we commence this month a new feature, "Points from Development Plan Inquiries" (*post*, p. 97), which will comprise notes of points of general interest which arise at the inquiries. The co-operation of all who attend development plan inquiries is invited, and we shall be pleased to receive any information suitable for inclusion in these notes.

This month's *Journal* also includes several articles which are concerned with development plans. Mr. Desmond Heap writes on the question of comprehensive development areas (*post*, p. 70); Mr. W. E. E. Lockley on the effect of a development plan on planning permission (*post*, p. 77), a subject also considered by Mr. T. Beaumont, who arrives at a different conclusion (*post*, p. 89); and in an article by Mr. Patrick Stirling, the question of planning standards is considered in relation to development plans (*post*, p. 80).

The second report of the National Parks Commission covering the year ending September 30, 1951, has been published (H.M.S.O. 2s.). During that period the Lake District, the Peak District, Snowdonia and Dartmoor have become National Parks.

The report draws special attention to a number of misconceptions as to the consequence of creating National Parks. It emphasises that designation of a National Park (in spite of the title) does not make any change whatsoever in the ownership of the land. Neither does it afford any right of entry to the land.

The Commission's recommendation for the establishment of the Pennine Way, a continuous right of way from Edale to the Scottish Border, has been accepted. Other long-distance routes are being surveyed (*e.g.*, Pembrokeshire Coast, North Cornwall Coast, Offa's Dyke, South Downs, Pilgrims' Way, Chilterns).

The Commission have been active in giving advice on development proposals in which the beauty of the countryside

was likely to be affected, and considerable space is given in the report to the representations made by the Commission to the Minister of Fuel and Power on the effect of the hydro-electricity schemes proposed by the B.E.A. in Snowdonia. In the view of the Commission these schemes would destroy the character of the Park if carried into effect. Elsewhere in the report tribute is paid to the B.E.A. for their co-operation with the Commission in dealing with electricity distribution schemes.

The order designating the Pembrokeshire Coast National Park has been signed by the Chairman of the National Parks Commission (Sir Patrick Duff). This is the fifth National Park to be designated.

The Order will be submitted in due course to the Minister of Housing and Local Government for confirmation.

The area, the boundaries of which are similar to those proposed in 1947 in the Hobhouse Report, comprises approximately 225 square miles, all in the county of Pembrokeshire.

The Local Government Manpower Committee, which was appointed in January, 1949, and includes representatives from eight Government Departments and the associations representing local authorities, has published its second report (Cmd. 8421, H.M.S.O. 1s. 6d.). The committee recommends greater freedom for local authorities in the acquisition and disposal of land. It is suggested that local authorities should be free, without Ministerial consent, to buy land within their areas by agreement in advance of requirements; to dispose of land held for purely local purposes, except where they propose to take less than the full market value; and, in general, to lease any land for any period up to 21 years. It is also proposed that they should, subject to regulations, be free to appropriate any land which they hold for the purpose of any of their functions, provided that land acquired by compulsory purchase should not be appropriated without Ministerial consent for a purpose not carrying compulsory powers.

The Court of Appeal has dismissed an appeal from the decision of the Divisional Court in *R.* v. *Northumberland Compensation Appeal Tribunal*. This case may prove to be of considerable importance in relation to planning appeals where a decision on a point of law is involved. See *post*, p. 109.

An interesting point of interpretation fell to be determined by the Lands Tribunal in a compulsory purchase case noted at p. 110, *post*. The relevant statutory provision was rule (5) in s. 2 of the Acquisition of Land, etc., Act, 1919, which provides that where the land compulsorily acquired is devoted (at the date of notice to treat) to a purpose for which there is no general demand or market, and would apart from the acquisition continue to be so devoted, the compensation is to be on the basis of the reasonable cost of equivalent reinstatement. The complication in the case in question was that at the date of the notice to treat the greater part of the premises, a Unitarian church and institute, were temporarily not being used for the religious and charitable purposes which were their normal use, and which would undoubtedly have brought the case within the rule had it been the use at the date of the notice to treat.

Professional men who are not lawyers but who find themselves increasingly emmeshed in the intricacies of regulations, Acts of Parliament and the decisions of the courts will welcome the new periodical CURRENT PROPERTY LAW which made its first appearance on January 15. It makes the resounding boast that month by month it covers ALL the property law from EVERY source. The first number contains a long and interesting article by Mr. W. A. Leach (an old friend to readers of this *Journal*) on the functions of a surveyor in estimating the value of goodwill in an application to the Lands Tribunal under the Landlord and Tenant Act, 1927. There follow short reports of all the cases heard in the High Court and Court of Appeal during December affecting property and summaries of all the decisions of the Lands Tribunals issued during the same period. Two Circulars of the Minister of Housing and Local Government are printed in full and so also is the order amending the jurisdiction and procedure of the Lands Tribunal. The essence of Parliament is given in four pages. The last, largest and most important item is the "Law Finder" which states succinctly in alphabetical form the effect of the whole of the law (cases, orders, Acts of Parliament, circulars, etc.) which became available during December. The treatment of the cases under three headings "Point," "Case" and "Comment" is novel and should make a special appeal to those to whom legal jargon is not second nature. The work is designed for architects,

auctioneers, estate agents, land agents, property managers, surveyors and valuers, but it seems probable that it will also be useful to many lawyers who have property interests. The subscription is £2 2s. 0d. per annum and the Publishers are Sweet & Maxwell, Ltd., the publishers of this *Journal*.

Can petty sessions quash an enforcement notice on grounds other than those in section 23 (4) (*a*) of the Act of 1947? To the conflicting answers to this question summarised in [1951] J.P.L. 570, there may be added *D'Alessio* v. *Enfield U.D.C.* (1951) 2 P. & C.R. 166, in which the Divisional Court remitted a case to the magistrates to quash an enforcement notice on grounds clearly not within the statute.

If an enforcement notice is not appealed from, can the defendant when prosecuted for non-compliance therewith challenge the validity of the notice on a ground not within the wording of section 23 (4) (*a*)? *Perrins* v. *Perrins* [1951] 2 K.B. 414; 1 P. & C.R. 457, which is authority for the proposition that he cannot, has been distinguished by the Appeals Committee of Lancashire Quarter Sessions: *see post*, p. 122.

It is understood that more than one case stated raising these points is on its way to the Divisional Court. It is to be hoped that the merits of the cases will not be such as to obscure an objective consideration of the wording of the Act.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the MANAGING EDITOR, *Journal of Planning Law*, 3 CHANCERY LANE, LONDON, W.C.2. *Every attempt will be made to return drafts or unsuitable copy, but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Areas of Comprehensive Development—Definition and Designation in Development Plans

By Desmond Heap, ll.m., l.m.t.p.i.

Comptroller and Solicitor to the Corporation of the City of London

Section 5 of the Town and Country Planning Act, 1947, being the important section containing the statutory outline as to the form and content of development plans made under the Act (the details thereof being found in the Town and Country Planning (Development Plans) Regulations, 1948) [1] is currently being subjected to close scrutiny at the various public inquiries now being held in different parts of the country in connection with development plans submitted by local planning authorities for approval by the Minister of Housing and Local Government.

Development plans are complex things. This will not surprise anyone who has studied the requirements of the aforementioned s. 5 and the Town and Country Planning (Development Plans) Regulations, 1948, and also the provisions of Circular 59 (as amended by Circular 70) dated December 13, 1948, Circular 63 dated June 24, 1949, and Circular 92 dated January 27, 1951 (all from the Ministry of Housing and Local Government), relating to the preparation of development plans. Notwithstanding the unavoidable complexity of the various documents which in the aggregate comprise a development plan, such a plan has two principal objects and two only. These are as follows:—

(1) To act as a general and flexible guide to all concerned as to the manner in which planning control within the area of the plan will be discharged, and particularly (so far as the private developer is concerned) as to the kind of development for which planning permission is likely to be granted by the local planning authority (such planning permission being, of course, an essential pre-requisite to the carrying out of any form of development even after the development plan has taken effect).

[1] S.I. 1948, No. 1767, [1948] J.P.L. 403.

(2) To designate land as subject to compulsory acquisition by Ministers, local authorities and other public bodies.

These two objects alone comprise the *raison d'être* of each and every development plan now in course of preparation and investigation under the 1947 Act.

In carrying out the first of them, that is to say, the object of acting as a guide to the manner in which planning control will, in general, be discharged, a development plan will do quite a number of things and the statutory sanction for doing them will be found in s. 5 of the 1947 Act. A development plan will *define the sites* (s. 5 (2) (*a*)) of buildings, airfields, pleasure grounds, nature reserves, etc.; it will *allocate areas* (s. 5 (2) (*a*) likewise) of land for specified purposes, such as agricultural purposes, residential purposes, industrial purposes or for the purposes of a local authority or a statutory undertaker; and it will *define as an area of comprehensive development* (s. 5 (3)) any area of land which, in the opinion of the local planning authority, should be developed (by somebody or other and not necessarily by a local authority) comprehensively as a whole. All these things a development plan will do (a) in discharge of the first of its two objects previously mentioned, and (b) in order to satisfy the statutory (and thereby inescapable) requirements of s. 5 (1) of the Act whereby a development plan must indicate "the manner in which they" (*i.e.*, the local planning authority) "propose that land in that area" (*i.e.*, the area covered by the plan) "should be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development should be carried out."

The second object which a development plan seeks to achieve relates to the designation of land as being liable to compulsory acquisition and may be so designated under two heads. The first head relates to compulsory acquisition for the purposes of the functions of public bodies; it is dealt with under s. 5 (2) (*b*) of the Act and, not being relevant to the purposes of this article, will not be further mentioned. The second head relates to the designation of land as subject to compulsory acquisition by the appropriate local authority. This is dealt with under s. 5 (2) (*c*) whereby the designated land may be of two kinds, namely—

"(i) any land comprised in an area defined by the plan as an area of comprehensive development . . . or any land contiguous or adjacent to any such area;

"(ii) any other land which, in the opinion of the local

planning authority, ought to be subject to compulsory acquisition for the purpose of securing its use in the manner proposed by the plan."

The question has been raised as to whether in a development plan it is in order for land to be *defined* as an area of comprehensive development without at the same time being also *designated* as subject to compulsory acquisition. The question is of essential practical importance because it is being noted that in a number of development plans submitted to the Minister for approval, land which has been subjected to definition as an area of comprehensive development has not always been subjected to designation as liable to compulsory acquisition.

In considering this interesting question it will be as well to remember at the outset that a local planning authority will be more chary of designating land as subject to compulsory acquisition than it will be of defining it as an area of comprehensive development because, whereas there are no time limits applicable to any such defining of land, it is clear that when land is designated as subject to compulsory acquisition, a local planning authority seeking to sustain this at the public inquiry into objections to the development plan will have to show that the designated land is likely to be actually purchased by the acquiring authority within ten years (seven years in the case of agricultural land) from the date on which the Minister approves the plan (s. 5 (4) (*a*)). In present times and conditions this will not always be easy to prove. Accordingly, if it can be shown that in a development plan there may be no defining of land as an area of comprehensive development unless such land is, in the same plan, designated as subject to compulsory acquisition, it will follow that the time limit applicable to designating will apply equally to defining, with the result that much defining of land as an area of comprehensive development will necessarily disappear from development plans.

As has been stated, the statutory authority for designating land, under the second of the two heads previously mentioned, as subject to compulsory acquisition, is clearly to be found in s. 5 (2) (*c*) of the Act. It is s. 5 (2) (*c*) (i) which carries such statutory authority so far as the question now under consideration is concerned, and it is submitted that s. 5 (2) (*c*) (i) carries the requisite statutory authority for doing this very thing *and for doing nothing else*. Section 5 (2) (*c*) (i), it is submitted, does not contain any statutory authority for defining

land as an area of comprehensive development although, admittedly, it makes reference to such a matter. If statutory authority is wanted (and it is) to enable a local planning authority in its development plan to define land as an area of comprehensive development, it is submitted that such statutory authority is not to be found in subs. (2) of s. 5 at all but, on the contrary, in subs. (3) and nowhere else.

Subs. (3) of s. 5 of the 1947 Act provides as follows:—

> " (3) For the purposes of this section, a development plan may define as an area of comprehensive development any area which in the opinion of the local planning authority should be developed or re-developed as a whole, for any one or more of the following purposes. . . ."

" The following purposes " may be itemised under four heads as follows, namely—

(1) for the purpose of dealing satisfactorily with extensive war damage;

(2) for the purposes of dealing satisfactorily with conditions of bad lay-out or obsolete development;

(3) for the purpose of providing relocation of population or industry or the replacement of open space required in the course of the development or redevelopment of any other area (as, for example, an area of extensive war damage or an area of bad lay-out or obsolete development in the redevelopment of either of which areas not all of the things which have been removed can be put back if improvement is to be effected);

(4) for any other purpose specified in the development plan.

It is submitted that subs. (3) of s. 5 does not merely particularise the kind of land which can be included in an area of comprehensive development but, in addition, the subsection itself, by the use of the words " a development plan may define as an area of comprehensive development," carries the statutory authority (and the only one there is) under which a local planning authority is empowered to define in its development plan any area which the authority thinks should be redeveloped as a whole.

If local planning authorities are to have the right (subject, in the ultimate analysis, to the approval of the Minister) to control the planned development of all land, it is for each local planning authority, acting on the best advice it can get, to make up its mind whether or not land should be

redeveloped comprehensively as a whole. Once a local planning authority makes up its mind on this point, the authority should make its intentions manifest in its development plan in order (may it be emphasised) that the development plan may thereby the better serve the first of its two objects, namely, the object of acting as a guiding factor as to the manner in which the local planning authority proposes to discharge its powers of planning control within the area of the plan. The statutory sanction for the local planning authority making its intentions manifest in the manner here suggested is to be found, it is submitted, in subs. (3) of s. 5 of the 1947 Act, and not anywhere else in the Act. Moreover, it is further submitted that it is not merely right that a local planning authority should make manifest, as here mentioned, its settled intentions about the redevelopment of areas of land as a whole, but that the authority is under a statutory obligation so to do in view of the requirements of subs. (1) of s. 5 of the Act relating to the indication in development plans of the manner in which a local planning authority feels that land in the area of its plan should be used.

Some doubt as to whether subs. (3) of s. 5 is the true statutory authority for defining an area of land as an area of comprehensive development may have been caused by the use of the words " For the purposes of this section " in the opening sentence of subs. (3), and one may perhaps be forgiven for imagining, as the writer at one time did, that there was here some reference to the immediately preceding subsection, that is to say, to the matter of comprehensive development as mentioned in subs. (2) (*c*) (i). This part of that subsection provides (to quote it again) that a development plan may—

" (*c*) designate as land subject to compulsory acquisition by the appropriate local authority—

(i) any land comprised in an area defined by the plan as an area of comprehensive development . . . or any land contiguous or adjacent to any such area."

On further reflection, however, it appears that when subs. (3) opens with the words " For the purposes of this section," the purposes of *the section* (not, be it noted, the purposes of merely *the preceding subsection*) to which reference is intended, are not the purposes of designation for compulsory purchase as mentioned in subs. (2), but the wider purposes (mentioned in subs. (1)) of indicating the manner in which

the local planning authority propose that land in the area of its plan should be used.

It may be admitted, notwithstanding what has been stated in the previous paragraph, that there is an undoubted "tie" between subs. (2) and subs. (3) of s. 5 of the Act, and that the link is to be found in the opening words, "For the purposes of this section," used in subs. (3). The reason for stating this is because there can be no designation of land under subs. (2) (*c*) (i) without there being first a defining of the designated land as an area of comprehensive development under the provisions of subs. (3). In short, whilst, so far as subs. (2) (*c*) (i) is concerned, there can be no designation of land without its being defined as an area of comprehensive development, there can be (and, indeed, may well have to be) a defining of land as an area of comprehensive development without its being in any way designated as subject to compulsory acquisition, and the reasons for this are as follows.

In drawing up its development plan the local planning authority may be, and most likely will be, looking ahead for at least twenty years. If the authority thinks that during that period of time certain land should be redeveloped comprehensively as a whole, then, for the reasons already stated, it should make its intentions clear in its development plan by defining (under subs. (3) of s. 5 of the Act) such land as an area of comprehensive development. But although the local planning authority is satisfied that the land in question should be redeveloped as a whole it may not be possible for it to say, owing to the exigencies of the times, that the appropriate local authority will, beyond all reasonable doubt, be able and willing to acquire that land compulsorily within the next ten years. Unless the local planning authority can be satisfied on this point and can bring evidence at the local inquiry to support this view and satisfy the Minister on the point, the designation of the land as subject to compulsory acquisition cannot, in view of the provisions of s. 5 (4) (*a*), take place.

Moreover, and irrespective of the statutory limitation on the designation of land as liable to compulsory acquisition, there are other reasons of a non-legal character for not designating as subject to compulsory acquisition, land which in the development plan is defined as an area of comprehensive development. It is conceivable that the definition of land as an area of comprehensive development having appeared in a development plan, the various owners of individual plots of

land within that area may themselves be able to put their heads together and produce some scheme of redevelopment as a whole which is entirely acceptable to the local planning authority. In such circumstances it is reasonable to suppose that the local planning authority would then grant planning permission for such redevelopment as a whole by some party or parties other than a local authority, in which case the need for compulsory acquisition by the appropriate local authority would not arise.

It may be added, in conclusion, that further support for the view here put forward that definition as an area of comprehensive development and designation as liable to compulsory acquisition are not matters which necessarily stand or fall together, is to be found in the last lines of subs. (3) of s. 5 which state as follows:—

> " and land may be included in any area so defined, and designated as subject to compulsory purchase in accordance with the provisions of subs. (2) of this section, whether or not provision is made by the plan for the development or redevelopment of that particular land." [2]

It is submitted that if due weight is given to the commas in the foregoing quotation the effect of these concluding lines of subs. (3) is to make it clear that—

(1) land may be included in an area defined as an area of comprehensive development whether or not provision is made in the development plan for the development or redevelopment of that particular land; and

(2) land may be included in an area of comprehensive development and may, in addition and under subsection (2) of s. 5, be also designated as subject to compulsory purchase whether or not provision is made in the plan for the development or redevelopment of that particular land.

In other words, there can be definition of land either with or without its designation; on the other hand, however, there can never be designation (at least not under s. 5 (2) (*c*) (i)) without definition.

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[2] It is of incidental interest (if no more), to note that in these concluding lines of subs. (3), which did not appear in the Bill as originally drafted and first submitted to Parliament, reference is made to designation of land as subject to compulsory *purchase* and not compulsory *acquisition* which is the expression uniformly used elsewhere in the Act. The use of the word " purchase " carries the mind readily to the compulsory *purchase* order which must follow and to the compulsory purchase procedure of the Acquisition of Land (Authorisation Procedure) Act, 1946, which, notwithstanding its short title always speaks of compulsory purchase and not compulsory acquisition.

The Effect of a Development Plan on Planning Permission

By W. E. E. Lockley, M.A.
Town Clerk, Preston

With the coming into operation of development plans a new era in planning control is dawning. Before the operation of the plan the local planning authority have a large measure of discretion in dealing with applications for planning permission. They must have regard to any directions which may have been given by the Minister as to the provisions to be included in the plan and to the provisions which, in their own opinion, required to be so included (s. 36, Town and Country Planning Act, 1947). Once the development plan becomes operative, however, the position is radically altered and these discretionary powers no longer apply in certain cases.

By s. 14 (1) the local planning authority must have regard to the contents of the development plan, but while there is nothing in the Act which expressly prevents the local planning authority from granting permission for development which does not accord with the development plan, the Minister, by a development order, may regulate the manner in which applications for planning permission are to be dealt with (s. 14 (3)). This power of regulation enables the Minister to authorise the local planning authority to grant permission for such development and, in exercise of his powers, the Minister has made art. 8 of the Town and Country Planning General Development Order, 1950,[1] which provides that the local planning authority may grant permission for development which does not accord with the provisions of the development plan in such cases and subject to such conditions as may be prescribed by directions of the Minister. The only reasonable construction to be put on these provisions is that once the development plan becomes operative the local planning authority may not give permission for development which does not accord with the provisions of the plan unless a direction has been issued by the Minister covering the case.

In some degree all local planning authorities, when

[1] S.I. 1950, No. 728, [1950] J.P.L. 432 *ff.*

zoning their areas for the purpose of their development plans, have to face the difficulties created by haphazard development in the past. There are many industrial towns in which most of the residential zones shown in the development plan contain industrial property and industrial zones residential property. Facing the realities of the situation most local planning authorities agree that, war or fire apart, periods of 30, 40 and 50 or more years will elapse before some development plan zones can be completely cleared of non-conforming uses. During this period it is to be contemplated that the occupiers of non-conforming premises will require permission to carry out development by way of additions or modifications to those premises, and the ability of the local planning authority to grant permission in such cases is a matter of concern both to the authority and the prospective developer.

For sake of illustration let it be assumed that the owner of a factory situated in an area allocated for residential use in an operative development plan wishes to carry out structural alterations to his factory which involve development, and the local planning authority recognise the impracticability of securing the removal of the factory from its present site within a period of 30 years. The local planning authority may be willing to grant the permission for the development and the owner may be prepared to carry it out although he realises that in 30 years or so he may be required to move. The development is ancillary to an industrial use in a residential zone and, if the construction of s. 14 of the Act and art. 8 of the General Development Order referred to above is correct, the local planning authority would be unable to grant permission unless the Minister issued a direction permitting them to do so. This situation leads to two difficulties.

First, when a development plan is published and submitted for approval objection is likely to be made by owners and occupiers of premises which do not conform to the proposed use zones shown in the plan. Whatever assurance the local planning authority may give to the objectors as to the impracticability of securing the removal of their premises from the zones they can only give a limited assurance as to the manner in which they would deal with applications for future development as, in dealing with such applications, the local planning authority are subject to the direction of the Minister. In other words, they can only say that they would be prepared to grant permission to develop based on the

realities of the situation if they are allowed by the Minister to do so. This state of uncertainty begets opposition to development plans which could in many cases be easily settled if the local planning authority were masters in their own house.

Secondly, if no general directions are issued under art. 8 of the General Development Order the Minister can expect to receive many applications for special directions to allow local planning authorities to grant planning permission, some of which may be relatively trivial cases.

The position could well be clarified either by a declaration of policy or the issue of general directions under art. 8 of the General Development Order by the Minister.

Planning Standards and Future Development

By Patrick Stirling, Barrister-at-Law

In his comments on the development plans now being prepared [1] Mr. W. A. Leach observed that planning is a matter of foreseeing and guiding future actions, and that it is not planning to sow doubts and bring stagnation. We agree, and he might have gone on to add that it is also the duty of all concerned at public inquiries thoroughly to scrutinise the methods by which it is proposed to guide such future action. In other words, it is of importance to the public to discover whether the planning authority of an area are proposing to adopt a uniform basis on which to examine future development applications and, in such cases, carefully to examine the proposed standards for residential density, plot ratio, and daylighting. Such proposals will have played an important part in the preparation of the plan: it appears, however, that planning authorities are not required to include their detailed proposals for plot ratio and daylighting in the statutory town map and programme map and the basis on which residential densities are calculated may vary. It seems, therefore, that there is a danger that such planning standards proposed for the future may escape the necessary examination, and it is important that their potential scope should be fully appreciated by the ratepayers of the area.

The system of control by a floor space index was described in the handbook "The Re-development of Central Areas": It is said, however, that this system has been found to be open to objection in certain cases and to operate inequitably in allowing greater accommodation on sites facing a very wide road or on corner sites, and to the detriment of sites on adjacent streets. It is argued that in the London area this method has produced excessively high building densities in some places, resulting in inadequate daylighting of rooms and in an over-development of sites in relation to the capacity of the street system.

It is claimed that the plot ratio system avoids some of the difficulties arising from the previous system in that (a) it is

[1] *Ante*, p. 13.

flexible and does not limit the architectural form of the building; (b) it facilitates the estimating of the floor space permitted on a particular site in advance; and (c) it allows an estimate to be made of the general effect of the control in relation to a particular zone. This system can be defined as expressing the relationship between the area of a site and the total gross floor area of the building which it is intended to erect on it. In any particular case it provides a figure which can be compared with the standard plot ratio approved by the planning authority for that area, and is thus a guide to the suitability of the bulk of the proposed building. This system can be applied to nearly all buildings except those constructed for residential purposes. The area of a site employed in determining the plot ratio is the net area, excluding any parts of adjoining streets. Gross floor area is measured on the overall dimensions of the building or part of the building at each floor above or below ground, and includes thicknesses of internal and external walls, areas of staircases, corridors, and covered passages by which there is no public right of way, and includes any basement or part basement used for office living or similar accommodation. Deductions, which are entirely at the discretion of the authority, may be made for (a) underground private garages, (b) bank vaults, strong rooms and safe deposits, and (c) electricity sub-stations and similar exceptional uses.

It is usually emphasised that the standards are guides and not inflexible rules, and may be adapted to special circumstances. In the case of certain special types of buildings, such as warehouses, it may be appropriate that a plot ratio higher than the standard laid down should be permitted. In other instances a building may make such demands on public utility services, transport services, and the adjoining road system, that the standard figure would be too high. This system of control will be accompanied by detailed plans to show the proposed plot ratio zones, and it is against these proposed zones that development applications will in part be judged.

The underlying principles of such control are, of course, that the bulk of non-residential buildings should be controlled in order to avoid over-development of sites and of office and commercial areas generally, and that the amount of accommodation provided is not in conflict with the general planning policy of the area. It is clear, however, that the adoption of such a system of control may seriously affect and injure the

position of the owner of the site and the rateable value in the area. Rigid application of such control may also involve the payment of compensation. There has, so far, been little opportunity to test the practical effects of such control, which may indeed be found to be a valuable guide.

The London County Council, in the development plan recently submitted, propose also to use the daylighting code as a guide to the suitability of development applications submitted under the Town and Country Planning Act, 1947. The principle of control of development in such a way as to prevent new buildings from causing obstruction to the daylight available to adjoining land has, of course, been recognised for many years. The daylighting code was prepared at the instance of the Minister of Town and Country Planning and has now been in operation for an experimental period and is to be found in use together with a system of control by angular lines. It is claimed by the advocates of this code that it encourages open planning forms and that windows are obstructed to a much lesser degree than when buildings are parallel with one another, and that it has also helped to eliminate the small, enclosed courtyard and light well. The code, however, will probably be found only to operate satisfactorily on sites of a reasonable shape and size.

The practical application of such a code is a technical matter, and the only indication in the statutory plan that such a code has been adopted may be in a short sentence to the effect that the authority will, when considering development proposals, have regard to the effect of a proposed building on the daylight reaching various parts of that building or adjacent buildings. Each plan should, therefore, be carefully scrutinised to see whether the authority propose to examine planning applications in the light of such a code.

The system of development control by density zones measured in terms of persons per acre is more general. The object of such control should be to make the best use of good residential areas and to allow higher densities on high and open ground, as compared with lower densities where the amenities are poor. It is most necessary, however, that ratepayers and landowners should ensure that adequate flexibility is provided in the scheme, and that the standard will not be rigidly enforced in each case of future development.

Where such planning standards have been adopted it is evident that they will have played an important part in the

preparation of the plan and on the proposals submitted to the Minister. They will, for example, affect the ultimate target population for the area, the increase in population which may be permissible, or the overspill consequent upon the proposals, the amount of new development contemplated, the future development in areas zoned for office and commercial use, and the future requirements for public services such as transport, education and hospitals. The position and interest of the landowner and of the ratepayer may be vitally affected. As already indicated, however, the Minister does not require that proposed planning standards such as plot ratio and daylighting should be included in the statutory plan to be submitted to him, although there may be some indication in the statutory statement that the planning authority, when considering development proposals, will have regard to certain codes of standards. It follows that such proposals may not receive the examination they deserve, nor is it clear how much importance will be attached by the Minister to such standards when considering appeals against refusals of planning permission. Is it to be assumed, for example, that where a plan which has been prepared in conjunction with such planning standards has been approved, the Minister will view appeals with disapproval in those cases which violate the standards adopted by the planning authority? It should be the duty of all those whose interests may be affected, to make sure (before the plan is approved) that such planning standard proposals are reasonable, are capable of flexible application, and will generally be beneficial to the area, and will not unnecessarily or unjustly penalise those with interests in the area.

Definition of "Shop" in the Use Classes Order, 1950

By W. A. Leach, F.R.I.C.S.

The definition of " shop " in the Use Classes Order, 1950,[1] sets out first the fundamental conception of a " shop " as a building used for the carrying on of any retail trade or retail business wherein the primary purpose is the selling of goods by retail. Any distinction between " trade " and " business " would seem to be minimised by the prescription of " the primary purpose."

Next, there follow certain specific uses which would seem not to be covered by the fundamental part of the definition. These uses are, therefore, additional; and the main definition is not constrained by the inclusion of the special cases.

The definition then continues with the words " or for any other purposes appropriate to a shopping area," and " shopping area " means, no doubt, an area which is primarily given over to buildings in which goods are sold by retail. The words " other purposes " are in extension of the specific uses where the business is not primarily the sale of goods by retail, and so must have a very wide ambit. " Other purposes appropriate to a shopping area " implies that the specific purposes are agreed to be appropriate, and the rule of *ejusdem generis* may apply to the " other purposes " if any common denominator can be found in the diversity of the specific uses.

Under the Rating and Valuation (Apportionment) Act, 1928, " Retail shop includes any premises of a similar character where retail trade or business (including repair work) is carried on." But it appears from *Ritz Cleaners* v. *West Middlesex* A.C. [1937] 2 K.B. 642, that two conditions must be satisfied for premises to be regarded as a retail shop within this definition:—

1. there must be retail trade or business or retail repair work or service carried on;

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[1] S.I. 1950, No. 1131, [1950] J.P.L. 603. The definition of " shop " in this Order was previously considered at [1950] J.P.L. 666, 761. See also Bulletin of Selected Appeal Decisions X, No. 22, noted *ante*, p. 56, and Practical Point, No. 345, *ante*, p. 62.

2. the trade must be carried on in premises of similar character to a retail shop.

It was on the ground of the express inclusion of " retail repairs " in the definition under the 1928 Act that " retail shop " was held in the *Ritz Cleaners Case* to include " retail services " (by Greene L.J., at p. 670). Although the Use Classes Order does not expressly refer to retail repairs it does include in the specific additional uses certain retail services. If A draws in B no doubt B will draw in A, *i.e.*, retail services will draw in some retail repairs, the more so since there is no parallel in the 1928 Act to the wide provision " or any other purpose appropriate to a shopping area."

There is no provision in the Order, as in the 1928 Act, that the premises must be of a *similar character* to a retail shop, a condition held to require that the public should be able to resort to the premises to buy their goods or have their needs and wants directly satisfied. It is not an objection under that Act, however, that goods are sold or delivered by roundsmen, or in the case of goods to be serviced brought to and delivered from the shop by roundsmen, provided the public can go to the premises (*Finn* v. *Kerslake* [1931] A.C. 446; *Bristol Co-operative Society, Ltd.* v. *Bristol Rev. Officer* (1932), 16 Rating and Income Tax 296, and *Ritz Cleaners* v. *West Middlesex A.C., supra*). All this, and the fulfilment of large standing orders to restaurants, etc., was held to be part of the *ordinary way* in which retail trade is carried out. It may be supposed, therefore, that similar practices will not exclude premises from the definition of " shop " in the 1950 Order.

It seems certain, however, that the *Bristol Co-operative Case* goes too far for planning. There, the subject of the appeal was a pasteurisation factory in part of which was a small milk shop in which a small proportion of the milk was sold. The remainder was sold under standing orders given at a number of retail shops occupied elsewhere and to roundsmen. It was held that for de-rating purposes the factory was primarily a shop. Similarly in *Finn* v. *Kerslake, supra*, where a bakehouse was held to be part of a baker's shop, whilst the *Ritz Cleaners Case* should not be relied upon as enabling goods from far and wide to be brought to the shop *for cleaning thereat*, without changing its character to " industrial." (A *reception office* for goods to be cleaned is within the specific uses mentioned in the definition in the Order.)

In a planning context it seems probable that one must look closely at what is done on the premises and that an occupier may use different parts thereof in different ways (para. 7 of Sched. III to the Act and art. 3 (2) of the Order). The primary use in such cases is more likely to be held to be industrial, with either a retail shop use in part of the premises if a specific part is appropriated to that use, or with retail sales as an incidental or ancillary use if no specific part is set aside. For derating purposes of the 1928 Act a business has been held to be indivisible, but "use" must be divisible or very material changes of use could pass unchecked. (Case X/18 in the Bulletin of Selected Appeal Decisions is not favourable to this view.) It is, therefore, unlikely that in a planning context the decision would be reached as in *Turpin* v. *Middlesbrough A.C.* [1931] A.C. 451, that a garage with a show window in which accessories were displayed and where petrol and accessories were sold to customers (although nobody was employed especially for selling the goods) was wholly a shop, the repairs being in the nature of retail repairs. The primary use was for repairs and it might well be considered to be industrial with retail shopping as an incidental use. Yet it is very difficult to draw the line. If *Ritz Cleaners* cannot be relied upon as an authority enabling goods to be brought in for cleaning from far and wide, at what stage do the premises cease to be used as a shop? It is, no doubt, a question of fact when the use becomes so much that of a factory that it ceases to be appropriate to a shopping area. The same can happen in a tailor's shop or a radio shop. First, the cutting or repairing may be *incidental* to the business of retail sales, then as work is brought in from other quarters it becomes *ancillary* (these terms ought to be distinguished although often used as if interchangeable) to the retail business, and finally may become a main use. If the shop premises are used for the work their character as a retail shop is at the last stage materially changed (see Bulletin of Selected Appeal Decisions, X/21): if there is a clear division into retail shop and workshop there is a material change of use of the latter part which is no longer used incidentally to the shop use.

Summing up, all that is *expressly* necessary under the Order for the use to be that of a "shop" is that it shall fall within certain boundaries, but apart from the sale of goods by retail and the specified uses, it is probably implicit that the characteristic of freedom for the customer to resort to the premises shall in every case be present, for the use must be

appropriate to an area to which people resort to buy goods by retail. Also, although the Order defines " shop " and not " retail shop " it is clear that it is " retail shop " which is being defined, and it is equally clear from the derating cases that resort to the premises by the customer as a normal method of doing business is an essential feature of a retail shop. Thus a mail order business may be a " retail trade or business " and may " sell goods by retail," but if the foregoing assumption is correct and customers cannot resort to the premises in which the business is carried on, the premises do not constitute a shop. Therefore the tests under the Order may be, (a) are the premises occupied for trade or business purposes in pursuit of which customers would usually go to a shopping area, (b) in the particular case can those customers resort to the premises to transact their trade or business, and possibly (c) is the trade or business transacted mainly openly as in a shop (as opposed to being transacted in a private office)? Given an affirmative answer to these questions, it would seem to be immaterial where the premises are situated or for what purpose they were designed.

Given that the main use is that of a shop, the incidental use of part of the premises for storing goods would not remove that part from the area of the shop (*Pope* v. *Whalley* (1865) 6 B. & S. 303); nor would the use of part as the kitchen to a restaurant (open to non-residents) (*Gordon Hotels Ltd.* v. *London C.C.* [1916] 2 K.B. 17) or as the kitchen to refreshment rooms (*Melluish* v. *London C.C.* [1914] 3 K.B. 325). Further the goods for sale need not be kept on the premises, and a coal order office is a retail shop (*Wallace* v. *Dixon* [1917] Ir.R. 236). These decisions (except *Pope* v. *Whalley*) were under the Shops Acts in which " shop " is defined as including " any premises where retail trade or business is carried on " (consolidating Shops Act, 1950, s. 74); " retail trade or business " being defined to include the business of a barber, hairdresser, sale of refreshments and intoxicating liquors, lending books for purposes of gain, and retail sales by auction. These decisions would seem to be equally applicable in the context of the 1947 Act.

The definitions in art. 2 (2) of the 1950 Order go on to provide (a) that office includes a bank and (b) that it does not include a post office. Presumably it is accepted that both are by nature appropriate to a shopping area, and the intention of averring that a bank is an office (which nobody would deny)

is in reality to imply that it is not to be regarded as appropriate to shopping area for the purposes of the definition of " shop "; also in averring that a post office is not an office the intention is no doubt that it shall be regarded as within Class I, as appropriate to a shopping area, and not in Class II also, as an office (which, of course, it is).

However, it is not within the power granted by s. 12 (2) (*f*) for the Minister to declare a change of use to be material, but only to declare it not to be material. Therefore, if it is not a material change of use to change from a post office to some other type of office (including a bank) or from some other type of office (including a bank) to a post office, nothing in any Order can be regarded as making the change of use material.

Incidentally, a fried fish shop is a shop and not necessarily a nuisance, *Errington* v. *Birt* (1911) 105 L.T. 373: the effect of the exclusion of four classes of shop from Class I is doubtful since it is questionable whether in any event they would represent material changes in the use of a shop. A public house is a place of entertainment and not just a shop: *Coombs* v. *Cook* (1883) 1 Cab. & El. 75; *Hall* v. *Box* (1870) 18 W.R. 820, but a public house is expressly excluded from the definition of " shop " in the Order. It would seem that any office (other than a bank or a post office) satisfying the tests set out above, would be in both Classes I and II of the Use Classes Orders, there being no provision comparable to that in the definition of " industrial building " whereby the latter expression does not include a shop. The Minister seems to have decided (Bulletin of Selected Appeal Decisions X/22) that an insurance office is an office in Class II, and to have taken it for granted that that *ipso facto* excluded it from Class I. There seems to be no foundation for such a decision.

Similarly, although an industrial building, as defined in the Order, excludes a shop, if a shoe repair shop, for example, becomes empty and is taken over for some other comparable industrial use, no Order can make that change of use material; therefore it has always been possible for the use to be changed to a shop for another purpose within Class I under the Order or outside the Order to another comparable industrial use.

Further Reflections on Development Plans

By T. Beaumont, M.A., L.A.M.T.P.I.

Allocation and Designation

Is definition (or allocation) of land by a development plan really as useless as Mr. Leach contends?[1] Mr. Heap appears to have had second thoughts[2] about the value of allocating land for specified purposes, which is expected to some extent to replace designation of land as subject to compulsory purchase, and such second thoughts are obviously right because there is nothing in law to stop the education authority acquiring school sites or the housing authority acquiring housing sites compulsorily, whether or not they are designated in the development plan. Failure to designate only embarrasses the acquisition of land for the purposes set out in s. 5 (2) (*c*). Surely it is an advantage to an owner to be forewarned that his land is likely to be wanted sooner or later? And if he wants to sell his land it appears that the Minister interprets the words "reasonably beneficial use" in s. 19 very broadly—even to the extent of holding that a purchase notice must be confirmed when it is shown that the effect of a piece of land being defined for school purposes is such that a lower rent for the land is obtainable than would otherwise be the case. I quote from a recent decision in which this appears to have been the point at issue:

> "the land the subject of the purchase notice is agricultural land of high quality, at present down to grass, which it is intended shall be acquired at some time, probably not before the next ten to fifteen years but possibly within the next ten years, for educational purposes. After careful consideration of the representations made on behalf of your council and the server of the notice the Minister accepts the contention made on behalf of the server that the land is incapable of reasonably beneficial use in its existing state."

Symbolic definition of roads

Mr. Leach condemns[3] the indication of new roads or schools by means of symbols on the development plan. This may be all very well where there is a town map, although I believe even town maps are normally produced on a scale of 1/10560, which is in fact too small to show road improvements

[1] *Ante*, p. 14.
[2] [1951] J.P.L. 694, para. 23; and see [1951] J.P.L. 633–4.
[3] *Ante*, p. 15.

accurately. But where there is no town map, how can new roads or school sites be indicated on the County Map (scale 1/63360) except by symbols? And does Mr. Leach want these important indications of the way in which a rural area will develop to be omitted entirely? Mr. Leach even goes so far as to suggest that a plan indicating roads or school sites by means of symbols is open to challenge under s. 11 (2) (*b*). He appears, however, to ignore in s. 5 (2) the general words " such plan shall include such maps . . . as may be necessary to illustrate the proposals aforesaid *with such degree of particularity as may be appropriate to different parts of the area.*" In any case the whole of s. 5 (2) is " subject to the provisions of any regulations."

Development contrary to the Plan

Another interesting point emerges from Mr. Leach's article.[4] Is there really anything in law to stop a local planning authority from approving development which is inconsistent with a Development Plan? True s. 14 (3) (*b*) enables the Minister to authorise the authority to grant consent in these circumstances and art. 8 of the General Development Order purports to empower the authority to grant such consent " subject to such conditions as may be prescribed by the directions given by the Minister under this Order." But, assuming the Minister has given no directions in the matter, what is to stop the authority granting consent? They are required by s. 14 to " have regard to the provisions of the development plan." But having regard to the development plan, and in the absence of any specific directions, is there really any reason why they should not without more ado grant consent in respect of an application which, though inconsistent with the plan, is in their opinion harmless? [5]

Scope of development plans

Mr. Leach's contention that plans should show only what authorities *undertake* to do in 5, 10 or even 15 years also affords scope for some difference of opinion. Before agreeing with this one would like to be assured that when approving a development plan the Minister will commit himself and his successors to financial aid in respect of everything in the plan. After all, the Minister has access to the wizard at No. 11 Downing Street, so he should be able to check up fairly thoroughly on planning authorities' forecasts.

[4] *Ante*, p. 16.
[5] A different view is taken in another article in this issue, see *ante*, p. 77.

Development in Barsetshire

Extension of Building Having Mixed Uses

The following conversation may be assumed to have taken place between S., a surveyor, and D.V., the district valuer, during an informal discussion on development charge:—

S. As you will have seen from the Form D.1, we are going to extend the Barsetshire Insurance Company's Offices in the High Street, Barchester; this is the second extension since the appointed day, and you will remember that you assessed a "Nil" development charge in respect of the first.

D.V. Yes—no special points arose and you were well within the tolerance of Schedule III.

S. This second extension only just exceeds the 10 per cent. cube allowance, even when added to the first extension; the excess is so small that I think you will agree that it is *de minimis*.

D.V. There is no statutory provision for *de minimis* in respect of development charge, as you have often complained. However, I cannot quite understand your figures as shown on Form D.1—perhaps you will kindly explain them.

S. Certainly. This is how I proceeded:—

	ft. cube.
Cube of the original building erected in 1937	525,000
10 per cent. tolerance	52,500
Extension already made since appointed day	20,000
Remaining tolerance	32,500
Add 10 per cent. of extension since appointed day	2,000
	34,500
Cube of proposed new office extension	30,000
Balance ..	4,500
Cube of proposed new garage extension	8,000
Garage excess over tolerances	8,500

D.V. I think you have gone wrong in several respects. First, we have had several discussions on this question of a 10 per cent. tolerance on extensions made since the appointed day ([1950] J.P.L. 415) but whatever merit your argument had under the original development charge exemptions regulations has surely gone in view of the provisions of the 1950 Regulations, "Buildings to which the Third Schedule to the Act applies." ([1950] J.P.L. 611.) This, as you know, permits the enlargement of such a building so long as the cubic content of the *original* building is not increased by more than one-tenth.

S. I am not going to press the point, but there may be some grounds for saying that the extension made under para. 2 to a Schedule III building becomes a building erected after the appointed day to which paras. 3 and 4 apply.

D.V. I think not, because the preceding paragraph requires an additional building so erected to be treated as the enlargement of the original building.

S. Well, we will let the lawyers argue that one; what is your next point?

D.V. Secondly, the building is used for more than one purpose, and in such a case the enlargement tolerances must be applied *pro rata* to the cubic content of the separate uses. I calculate the tolerances as follows:—

Original building, 525,000 cubic feet.

Divided as to:—

	cubic ft.
(1) Offices, ground and upper floors ..	460,000
One-tenth tolerance	46,000
(2) Garage in basement	65,000
One-tenth tolerance	6,500

You have already used up 20,000 cubic feet of the office tolerance in your previous extension, so you have remaining 26,000 cubic feet for offices and 6,500 cubic feet for garage purposes. Now, your present extension is:—

	cubic ft.
(1) Offices	30,000
Less unexhausted tolerance ..	26,000
Liable for development charge ..	4,000

	cubic ft.
(2) Garage	8,000
Less tolerance	6,500
Liable for development charge ..	1,500

S. I think you are making rather a fine art of all this. Isn't the garage use merely an ancillary one in connection with the main use as offices? Actually, we didn't really want a garage in the basement originally but the town planning people insisted on it before they would pass the plans for the offices. The recent case in the *Bulletin of Selected Appeal Decisions*, X/18 ([1952] J.P.L. 55) though concerning rather different circumstances seems to suggest that you look at the predominant use.

D.V. I can only refer you to the *Practice Notes*, 1st Series, para. 16 (c):—

"(c) Where a building is increased as a whole by 10 per cent., and has two or more uses by one person, the whole extension cannot automatically be devoted, without liability to charge, to one of the uses. Assuming a building originally with 60 per cent. of one use and 40 per cent. of another: the whole building can be enlarged by 10 per cent. without development charge, and either:—

(i) the same proportions as before can be maintained in the enlarged building: or

(ii) as a maximum the larger use can be increased to make 66 per cent. of the enlarged building: or

(iii) as a maximum the smaller use can be increased to make 44 per cent. of the enlarged building."

Moreover, the Development Charge Exemptions Regulations, 1950, "Changes of use in a building used for more than one purpose" ([1950] J.P.L. 613), seem rather to clench the matter by exempting only changes up to 10 per cent. of the cubic content of the partial use.

S. That provision doesn't apply to our building, I think, because it is one to which Schedule III itself applies.

D.V. I agree, but I mentioned it to illustrate the principle.

S. May I refer you—again purely as a matter of principle—to the Minister's Circular No. 67:—

"In the case of a change of use involving only part of a building, which would nevertheless continue to be used as a whole, the Minister takes the view that the question

whether there is a material change of use should be decided in relation to the whole premises and not merely in relation to the part, *i.e.*, the point at issue is whether the character of the whole existing use will be substantially affected by the change which is proposed in a part of the building." ([1949] J.P.L. 258.)

D.V. I am willing to defer assessment of the charge until you have obtained a ruling from the Central Land Board on this point of principle.

S. Very well, I will do so. Finally, you will recall that we had a " Nil " determination for our claim under Part VI of the Act.

D.V. That was so, but you will no doubt have seen the decision of the Lands Tribunal in the case of *Stace* v. *Central Land Board* [1952] J.P.L. 47, which indicates that in certain circumstances a development charge may arise although the development value under Part VI of the Act is " Nil ".

Ministry of Housing and Local Government Circulars

[*Continued from* [1952] J.P.L. 60]

Circular No. 77/51, dated December 21, 1951. Town and Country Planning (Construction and Improvement of Private Streets) Regulations, 1951. [2d.]

Progress of Development Plans

(*Continued from p. 26, ante*)

The following is a continuation of the list of plans submitted to date (January 14, 1952). Any objections should be sent to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before the closing date indicated.

36. Gloucestershire County Council.
Local inquiry: February 20, 1952.

37. Exeter County Borough Council.
Local inquiry: January 22, 1952.

38. Canterbury County Borough Council.
Local inquiry: February 13, 1952.

39. Leeds County Borough Council.
Local inquiry: March 11, 1952.

40. East Suffolk County Council.
Local inquiry: February 26, 1952.

45. Lancashire County Council.
Submitted to Minister: November 29, 1951.
(*London Gazette*, December 14, 1951.)
Closing date for objections: February 9, 1952.

49. Northamptonshire County Council.
Submitted to Minister: December 14, 1951.
(*London Gazette*, December 21, 1951.)
Closing date for objections: February 9, 1952.

50. Bucks County Council.
Submitted to Minister: December 18, 1951.
(*London Gazette*, December 21, 1951.)
Closing date for objections: February 9, 1952.

51. Halifax County Borough Council.
Submitted to Minister: December 21, 1951.
(*London Gazette*, December 28, 1951.)
Closing date for objections: February 6, 1952.

52. Grimsby County Borough Council.
Submitted to Minister: December 31, 1951.
(*London Gazette*, January 1, 1952.)
Closing date for objections: February 16, 1952.

53. Birkenhead County Borough Council.
Submitted to Minister: December 28, 1951.
(*London Gazette*, January 4, 1952.)
Closing date for objections: February 19, 1952.

54. Salford County Borough Council.
Submitted to Minister: December 28, 1951.
(*London Gazette*, January 4, 1952.)
Closing date for objections: February 28, 1952.

55. Rutland County Council.
Submitted to Minister: December 29, 1951.
(*London Gazette*, January 4, 1952.)
Closing date for objections: March 1, 1952.

56. Walsall County Borough Council.
Submitted to Minister: December 29, 1951.
(*London Gazette*, January 4, 1952.)
Closing date for objections: February 29, 1952.

57. Huddersfield County Borough Council.
Submitted to Minister: December 29, 1951.
(*London Gazette*, January 4, 1952.)
Closing date for objections: February 22, 1952.

58. Coventry County Borough Council.
Submitted to Minister: December 31, 1951.
(*London Gazette*, January 8, 1952.)
Closing date for objections: March 1, 1952.

59. London County Council.
Submitted to Minister: December 31, 1951.
(*London Gazette*, January 11, 1952.)
Closing date for objections: March 15, 1952.

60. Huntingdonshire County Council.
Submitted to Minister: December 31, 1951.
(*London Gazette*, January 4, 1952.)
Closing date for objections: February 22, 1952.

61. Smethwick County Borough Council.
Submitted to Minister: December 31, 1951.
(*London Gazette*, January 4, 1952.)
Closing date for objections: February 18, 1952.

Points from Development Plan Inquiries[1]

Croydon County Borough Council

There were about 500 written objections to the development plan for Croydon, of which 200 related to one scheme. The inquiry lasted 11 days.

Particulars of financial cost

The corporation did not call a financial witness, although the borough engineer gave estimates of the cost of the engineering works involved in particular schemes. Various objectors pressed for figures of the estimated cost of carrying out the development plan, and pointed out that at the West Hartlepool [2] and Hull inquiries financial witnesses had been called. Counsel for the corporation summarised the corporation's attitude on this matter in a statement which referred to the five principal land uses concerned (education, highways, industry, open spaces, and residential) and then stated:—

We cannot say today how much the corporation will have to do, but (excluding the Education Act and Housing Act expenditure) it is obvious that by far the greater part of future development needed to implement the plan will be by private landowners, just as if there were no development plan.

We cannot say what will be the prices of labour and materials or what will be the state of the law as to compensation when much of our work falls to be done. It is thus quite impossible for the corporation even to receive accurate detailed advice at this stage, much less to give reliable public forecasts of the costs of an improvement to be made years hence.

Equally it is quite impossible at this stage to foretell the state of rating law in the years ahead or to assess the improved income we hope to derive from developed frontages.

Detailed finance at an inquiry of this nature, therefore, is wholly irrelevant, and incidentally would have prolonged the inquiry interminably as well as uselessly.

In whatever form the plan is approved each item of work to be done by the corporation will first have to come before the council—with

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[1] The Editor acknowledges with thanks the information as to development plan inquiries which has been forwarded by the clerks of a number of local authorities. We shall be glad to receive any news of further points of general interest arising at such inquiries.

[2] See [1951] J.P.L. 36, 38.

an estimate—for specific approval and most items will require individual consent from whatever Ministry is concerned. Then will be the time to talk about the details of finance, and approval of the plan by the Minister will not authorise the expenditure by the corporation of a single penny.

We are quite satisfied of this—that we are not embarking upon anything which could throw a burden on the rates at any time of more than a very few pence in the pound, and we are embarking upon a plan to achieve continued and indeed enhanced prosperity for Croydon.

Proposals not to be carried out within 20 years

The corporation pressed for the inclusion in the plan of a number of schemes which, it was admitted, will not mature within the next 20 years. This gave rise to argument as to the meaning of para. 5 of Ministry Circular 59, dated December 13, 1948, which states that:

> The proposals to be shown on basic maps will not settle the exact lines of future development . . . but will indicate the broad basis of planning authorities' intentions about the future use of land in their areas. It is suggested as a general guide that planning authorities should limit themselves to reasonably firm proposals, and not include them unless they see a likelihood of their being carried out within about twenty years. This should not, however, exclude proposals which are of such significance that land ought to be reserved for them even if they cannot be carried out within twenty years.

Notation of principal traffic roads

The Ministry's requirement in Circular 59, that principal traffic roads should be shown in a town map with thin black line edging $\frac{1}{8}$-inch apart, caused some confusion as such a notation according to the scale of the map would imply a road 110 feet wide. A number of objectors had assumed that because a principal traffic road was shown in this manner the plan intended that it should be widened to 110 feet with the consequent demolition of a large amount of property, and (with few exceptions) the Development Plan made no such proposals.

General effect of plan

A number of objectors appeared to have overlooked the point that the Development Plan shows *primary* zoning of areas on the plan; some appeared to be under the impression that the plan gave the council executive powers and that because a particular property had a use different from the primary zoning, it was the council's intention immediately to dispossess the occupier: the council's representatives were able to reassure a number of objectors on this point.

Kingston-upon-Hull County Borough Council

Designation and definition

It was submitted by counsel for certain of the objectors that having regard to the wording of subss. (2) and (3) of s. 5 of the Act of 1947 it is not possible to have an area of comprehensive development which is not wholly designated as subject to compulsory acquisition. The argument is that the power to designate as subject to compulsory acquisition which is contained in sub-para. (i) of para. (*c*) of subs. (2) is a power to designate land defined as an area of comprehensive development, and that subs. (3) which states that a plan may define an area as an area of comprehensive development if it satisfies certain conditions is merely a definition subsection, indicating what can be an area of comprehensive development for the purposes of designation under subs. (2) (*c*) (i).

This view was opposed by counsel for the corporation, who submitted that subs. (3) of s. 5 gave a local planning authority power to define an area of comprehensive development without designating the whole or any part of it, and that it was desirable that this should be done in certain cases, in order to keep the public fully informed.

(An article by Mr. Desmond Heap on this question is published at p. 70, *ante*.)

West Sussex County Council (Northern Section)

Surface mineral working areas

The Sussex and Dorking United Brick Company objected that the county council had not allowed them enough "elbow-room." In reply the county council endeavoured to prove that the area allocated was sufficient to last for 50–100 years, which is the period specified in the Memorandum on the Control of Mineral Workings. The company's attitude was that if production increased substantially, the allocation was insufficient.

In respect of another area the county council did not allocate certain land in the ownership of the company for mineral workings because it would lie on the wrong side of a proposed by-pass: in return they had allocated an equivalent area (not owned by the company). The company possess no planning consent in respect of any of the land. From an operational point of view the company were satisfied, but maintained their objection because they were advised that the county council's

proposals prejudiced their rights under the "near-ripe" scheme. The county council maintained that the proper planning of the area was paramount.

The Showmen's Guild

A stereotyped objection by the Guild was lodged, but they admitted that only in one case did the plan prejudice their members. That was a case of a field which was allocated for residential purposes. The county council contended that the field ought to be used for residential purposes, and in any event there were complaints from local residents with regard to the occasional use of the field as a fairground. The county council pointed out that there were several public open spaces in the town (Horsham) which were under the control of the urban district council, and there was nothing to stop the urban district council making these open spaces available for occasional fairs if the local inhabitants wanted them.

Comprehensive Development

There was a proposal in the plan to the effect that a certain narrow road should be widened, and this will seriously affect a garage which is nearing the end of its normal life unless the new garage can be erected partly on an adjoining piece of ground in the same ownership on which there are at present some rather derelict cottages.

The area is not included in a comprehensive development area and it is doubtful whether even if the area is acquired in the first instance by the local authority and let back to the owners, s. 83 can apply, although Circular 71 suggests that it can. The problem may be solved under the Ministry of Transport Circular 637, whereby if the Minister certifies the land as land to which a global settlement of development charge is applicable, the difficulties created by the transfer of development values will be overcome. The case seems to indicate, however, that it ought to be easier to transfer development values from one piece of land to another.

Berkshire County Council

There were 38 objections, of which 7 were withdrawn before the first day of the inquiry.

Procedure

In general, the usual order was followed of hearing first the objections where counsel were appearing, then those where the objectors were represented by solicitors, and then those where other professional representatives appeared. In two cases, however, all the objections to a particular proposal were taken together, and it was arranged to hear all the mineral undertakers' objections on the same day.

The deputy clerk of the council made an opening statement on general lines and indicated that he proposed to call the council's technical witnesses as each objection was taken. Written proofs of evidence had been prepared in every case, of which copies were available for those concerned, and when read these proofs constituted the evidence in chief. The council's witnesses were then subject to cross-examination and re-examination, the objector could then present his case and call any witnesses, and the representative of the county council replied in relation to that objection.

Statutes

Expiring Laws Continuance Act, 1951

(15 & 16 Geo. 6, c. 8)

[*Summarised*]

This Act continues in operation until March 31, 1953, the Licensing Planning (Temporary Provisions) Act, 1945 (8 & 9 Geo. 6, c. 15) as amended by the Licensing Planning (Temporary Provisions) Act, 1946 (9 & 10 Geo. 6, c. 53) and the Licensing Act, 1949 (12, 13 & 14 Geo. 6, c. 59).

Statutory Instruments

Defence Regulations (No. 4) Order, 1951

(S.I. 1951, No. 2113)

[*Summarised*]

Art. 5 provides that Regulation 68 of the Defence (General) Regulations, 1939 (which empowers certain Ministers to make provision by order for regulating and restricting the felling of trees and the sale of growing timber for felling) shall cease to have effect as from December 9, 1951. (See now the Forestry Act, 1951: [1951] J.P.L. 538.)

[*Note.*—Reg. 68CA (restriction on conversion of housing accommodation to use for non-residential purposes) is continued to December 10, 1952: see S.I. 1951, No. 2116.]

The Town and Country Planning (Construction and Improvement of Private Streets) Regulations, 1951

(S.I. 1951, No. 2224)

Made . . . . . *December* 17, 1951
Coming into operation . . *January* 7, 1952

[*Summarised*]

S. 48 of the Act of 1947, enables land which is defined in a development plan as land for a proposed road or road

widening (including the road it is proposed to widen) to be declared to be a private street after acquisition by the council of the borough, urban district, or (as to rural districts and county roads) county (in London, the Common Council of the City of London or the metropolitan borough council). In relation to land thus declared to be a private street the relevant private street works code (the Private Street Works Act, 1892, ss. 150 and 151 of the Public Health Act, 1875, or comparable legislation) is to have effect subject to regulations made under the Act. These regulations prescribe adaptations and modifications to be made in the relevant private street works code in such cases. The code applicable in any particular case, modified where necessary by reg. 4, will enable the appropriate council to execute street works and recover expenses from the owners of adjoining lands. Reg. 5 limits the aggregate amount chargeable on adjoining owners to the "standard amount" which could have been so charged in respect of street works executed in the course of any operation of construction or widening carried out to by-law or similar standards, and requires that any estimate of the total cost of works, which must be published under the code, shall be accompanied by an estimate of the standard amount or by a certificate that the estimated cost does not exceed it. Reg. 9 adds to any grounds of objection specified in the code the ground that the sum of expenses charged on owners exceeds the standard amount. Reg. 6 defers the recovery of apportioned expenses in certain circumstances. Reg. 7 empowers the recovery of expenses incurred in the construction of sewers before the land is declared to be a private street. Reg. 8 gives a power of entry on neighbouring land for the purpose of executing street works. Reg. 10 provides that the street, when made up or widened, shall become a highway repairable by the inhabitants at large, and requires notice of the fact to be posted.

The regulations are of general application but can be superseded in any particular district by special regulations made under subs. (7) of s. 48.

Parliamentary Intelligence

Debates on Mineral Development Charge Set-Off Regulations

A debate on the Mineral Development Charge Set-Off Regulations, 1951,[1] took place in the House of Commons on December 3, 1951. (H.C. Debates, Vol. 494, col. 2170.)

Mr. J. Enoch Powell said that it was necessary to approve the regulations in order to give full effect to the Mineral Workings Act, 1951. He asked for an assurance that the presentation of the regulations for approval was not evidence that a revision of the Act of 1947 would be deferred, and that such revision would be in no way prejudiced by such approval.

Mr. A. J. Irvine asked for an approximate estimate of how much of the £300 million fund would go, under the regulations, to the owners of mineral interests, and how much of the fund would be left, after this and other preferential claims had been paid, for division amongst the other claimants. He thought it was wrong that having decided upon a global sum, the basis of policy should be changed by a series of preferential claims by particular classes of owners.

Mr. Thornton-Kemsley said that it should be recognised that the regulations were only of a temporary character, because the 1947 Act should be amended as soon as possible.

Mr. D. Walker-Smith stressed that the large share of the £300 million fund which would be allocated to minerals would prejudice the position of other claimants. The time within which the £300 million scheme was to be made was running very rapidly, and the need for radical amendment of the development charge legislation was urgent.

The Parliamentary Secretary to the Ministry of Housing and Local Government (*Mr. Marples*) indicated that the Minister had under active consideration the question of the working of the Act of 1947 and the town planning provisions of the Mineral Workings Act, 1951. Until the Act of 1947 was amended, it was necessary for the regulations to be approved.

Mr. G. Lindgren supported the regulations, and indicated that the Opposition would oppose any fundamental amendment of the Act of 1947.

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[1] S.I. 1951, No. 2156. Summarised, *ante*, p. 31.

In reply to Mr. G. R. Mitchison, Mr. Marples said that there was no intention to amend the Mineral Workings Act, 1951, except in so far as it was affected by the Act of 1947.

Resolved that the regulations be approved.

A short debate on the same regulations took place in the House of Lords on December 4, 1951 (H.L. Debates, Vol. 174, col. 774).

Lord Lloyd referred to the negotiations which had resulted in the regulations and shortly explained their effect.

Lord Silkin said the regulations should be approved.

Viscount Portman asked what sum would be payable from the £300 million fund in respect of minerals to which the regulations applied, and said he thought the total sum should be reconsidered.

Lord Lloyd said that it would not be possible to say how much the claims amounted to until they had all been valued. Approval of the regulations would not compromise the Government's future action in regard to the Act of 1947.

Motion that the regulations be approved, agreed to.

National Parks

A debate on National Parks took place in the House of Commons on December 6, 1951. (H.C. Debates, Vol. 494, col. 2700.)

Dr. Barnett Stross said he wished to present four problems —of park administration, of the Minister's nominees on the joint boards, the North Wales hydro-electricity schemes, and the question of footpaths.

On administration he said that a danger of divided loyalties arose if a planning officer was employed in part by a joint board and in part by a constituent authority. With regard to the nominees of the Minister the Minister should in every case see that the users of the park were fully represented. In the case of the hydro-electricity schemes it was desirable that the electricity lines should go underground and although the financial cost of that would be high, if borne nationally it would only mean a very small increase in the price of electricity. With regard to footpaths, these were being ploughed up and not replaced, and some local authorities were not carrying out their statutory duty to repair footpaths.

Mr. Anthony Greenwood said that many people were disturbed because in the case of the Peak District and Lake

District National Parks, the planning officers of one of the local authorities involved had been appointed as planning officer for the National Park. This was contrary to an assurance which had been given by the Minister on the Standing Committee of the National Parks and Access to the Countryside Bill, and if a planning officer fulfilled two posts at once it militated against the unity conception of the National Parks.

Mr. E. H. Keeling supported the remarks of the two previous speakers.

The Parliamentary Secretary to the Ministry of Housing and Local Government (Mr. Marples) said that the previous Minister (Mr. Dalton) had decided that the joint boards should decide as they thought fit whether an independent planning officer should be appointed, and he considered that to be the best policy. The national interest was safeguarded because one-third of the membership of the Board was appointed by the Minister, and the joint boards should be given a chance to prove themselves.

With regard to footpaths, in December, 1952, when the local authorities had completed their draft maps of footpaths, they could be required to keep them in repair. In the meantime there was a tendency for the authorities not to admit a path was a footpath. Where footpaths were ploughed up illegally, the highway authority should be requested to take action.

Replies to Questions in the House of Commons

Development Plans

In reply to Mr. D. Walker-Smith the Minister of Housing and Local Government (Mr. H. Macmillan) said that 48 development plans had been submitted to him and 108 remained to be submitted. About half of the outstanding plans were expected to be in before the end of 1951. The maximum extension of time which had been granted for submission of any plan was one and a half years, that is, until December 31, 1952. (November 27, 1951. H.C. Debates, Vol. 493, col. 1096.)

Town Development to relieve congestion

In a written reply to Mr. Elwyn Jones and Mr. Donnelly, who asked whether the Government would introduce legislation and give financial help to assist towns which would

undertake to expand in order to relieve overcrowding in congested areas, the Minister of Housing and Local Government (Mr. H. Macmillan) said he hoped to introduce legislation to assist town development for the relief of congested areas early in the new year. (November 27, 1951. H.C. Debates, Vol. 493, cols. *121–122*.)

Financial advances to New Towns

In a written reply to Viscountess Davidson, the Minister of Housing and Local Government (Mr. H. Macmillan) stated that advances to development corporations in England and Wales under the New Towns Act now total just over £17 million. The details of the amounts advanced to each corporation are as follows :—

	£
Aycliffe	1,276,850
Basildon	721,100
Bracknell	201,000
Gorby	60,000
Crawley	2,538,800
Cwmbran	111,050
Harlow	2,677,100
Hatfield	327,200
Hemel Hempstead	3,070,200
Peterlee	721,500
Stevenage	1,931,700
Welwyn Garden City	3,421,000
Total	£17,057,000

(November 27, 1951. H.C. Debates, Vol. 493, col. *121*.)

Central Land Board Practice

Form S.1.A. (Minerals)

The Near Ripe Minerals Scheme

The Central Land Board have issued an explanatory pamphlet (Form S.1.A. (Minerals)) explaining the near ripe minerals scheme embodied in the Mineral Development Charge Set-Off Regulations, 1951 (S.I. 1951, No. 2156). This scheme has already been summarised in this *Journal* (*ante*, p. 31).

Purchase and sale of near ripe minerals

The pamphlet states that a sale or lease of near ripe minerals can take place on the basis that no development charge will be payable for the working of the minerals. A purchaser of near ripe minerals will be well advised to ensure that the vendor assigns to him the right to any payment from the £300 million which is still outstanding. Otherwise he may not receive the full benefit of the near ripe scheme in the event of, for example, a refusal of planning permission. The same point may arise when a will is being made. If the testator wishes that the person to whom he is leaving the minerals should have the full benefits of the near ripe scheme, he should ensure that that person is also left the right to any payment from the £300 million in respect of the minerals.

Book Reviews

The Law of Landlord and Tenant. By R. Borregaard, M.A., Barrister-at-Law. (Stevens and Sons, Ltd. 6s.)

This is a new edition of a very useful little book published in the "This is the Law" series which deals with the changes brought about by the recent Leasehold Property (Temporary Provisions) Act, 1951. It is of value not only to lawyers but to all those who are interested in the many daily problems that arise between landlord and tenant.

R. P. Crompton.

Notes of Cases[1]

Court of Appeal

Challenging the Minister's Decision on a Question of Law

R. v. Northumberland Compensation Appeal Tribunal [2] (December 4–7, 19, 1951). The Court of Appeal (Singleton, Denning and Morris L.JJ.) dismissed this appeal against the decision of the Divisional Court [3] who had made an order of certiorari quashing an award of the Northumberland Compensation Appeal Tribunal on a question of compensation under the National Health Service Act, 1946. The Tribunal had stated in the award their reasons for their decision. The Divisional Court held that it was open to the court to quash the decision if the reasons stated disclosed error of law.

Singleton L.J. said that the Attorney-General had admitted that an error in law had been made in the assessment of compensation by the Tribunal, but had argued that an order of certiorari could not be granted in respect of a decision of such a tribunal on the ground of error on the face of the record. But on this point he agreed completely with the clear and forcible judgment of Lord Goddard C.J. in the Divisional Court that the decision of the Tribunal was a " speaking order " and if there was error on the face of it the court could quash the order, although it could not substitute another order for it.

The Attorney-General had also argued that there was no error on the face of the Tribunal's decision, but before the Divisional Court it had been common ground that there was such error, and the Tribunal should not, in the Court of Appeal, be allowed to take the point that there was no apparent error.

Denning L.J. said that although in recent years the scope of certiorari seemed to have been somewhat forgotten, the

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1 Full reports of these cases will be published in *Planning and Compensation Reports.*

2 Counsel—*The Attorney-General (Sir Lionel Heald K.C.); J. P. Ashworth,* and *H. A. P. Fisher,* for the Tribunal; *Gerald Gardiner K.C.* and *Maurice Lyell,* for the respondent.

3 [1951] J.P.L. 106.

Court of King's Bench had had an inherent jurisdiction to control inferior tribunals, in a supervisory capacity, and certiorari could properly be used to correct errors of law which appeared on the face of the record.

MORRIS L.J. agreed that the appeal failed.

Appeal dismissed.

As pointed out at [1951] J.P.L. 107, it appears that this decision may have considerable importance in relation to certain planning appeals under the Town and Country Planning Act, 1947. Decisions under s. 17 are always decisions on questions of law, and reasons for the decisions are usually given, and such decisions may therefore be challenged by certiorari. Similarly in the case of a s. 16 appeal if it is founded upon a question of law, stated in the determination.

H.J.J.B.

Lands Tribunal Decisions[1]

Compensation for Compulsory Purchase

Aston Charities Trust, Ltd. v. Stepney Corporation[2] (January 1, 1952). This was a claim for compensation payable upon the compulsory purchase of premises in Stepney known as Durning Hall Unitarian Church and Institute. Notice to treat was dated February 26, 1946. The property comprised on the ground floor three large rooms, used as a gymnasium, a general meeting room and a loan club room, and also certain subsidiary rooms, and on the upper floor a church and a large concert hall. The claimants were a trust, the objects of which were restricted entirely to religious and charitable purposes, and they were under a duty to devote the whole income of the trust to such purposes.

In 1941, following war damage to the locality and to the church, the activities of the trust were greatly reduced, and were carried on in subsidiary rooms, the main hall being closed down. In 1942 a firm of organ builders were permitted to use

[1] Full reports of these cases will be published in *Planning and Compensation Reports*.

[2] Counsel: *G. R. Blanco-White K.C. and James Comyn*, instructed by Cummings, Marchant and Ashton, for the claimants; *G. R. Mitchison K.C.* and *Stuart Horner*, instructed by the Town Clerk of Stepney.

part of the premises for storing organs from other war-damaged churches, and in 1944 all except a small part of the accommodation was let to this firm for the duration of the war and thereafter subject to six months' notice.

In these circumstances the question arose as to whether at the date of the notice to treat the premises were devoted " and but for the compulsory acquisition would continue to be devoted " to the purposes of the trust, so that the claimants would be entitled to compensation on the basis of the reasonable cost of equivalent reinstatement under r. (5) in s. 2 of the Acquisition of Land, etc., Act, 1919.

The Tribunal (J. P. C. Done, Esq., f.r.i.c.s.) held that having regard to the reason for the temporary use to which most of the premises was being put, and to the intentions of the claimants as to terminating that use and resuming their charitable work as soon as possible, the property was at all material times devoted to the objects of the trust, and compensation was payable on the basis of r. (5). The Tribunal further held that the cost of equivalent reinstatement should be calculated on prices current at the date of notice to treat, and on this basis the amount of the compensation had been agreed at £18,480 11s. 2d.

Compensation assessed at £18,480 11s. 2d. The acquiring authority to pay the claimants' costs on the High Court scale.

Correspondence

To the Managing Editor,
Journal of Planning Law.

Unfinished Buildings. Section 78 of the Act.

Sir,

In the note upon *Marks & Spencer* v. *L. C. C. and Central Land Board*,[1] there appears the suggestion that "if there had been . . . a building contract which involved the demolition of the old buildings and the erection of the new, it might have been possible to say that, though the performance of the contract had proceeded no further than demolition of the old building that was nevertheless works for the erection of the new."

This question arose in a case with which I was concerned. Demolition works began on or a few days after March 25, 1948, in pursuance of a building contract and the works had not progressed beyond the demolition stage on the "appointed day" (July 1, 1948). It was urged on behalf of the owners that the words "works *for* the erection or alteration of a building" in s. 78 were of wider scope than "works *of* erection" etc., and sufficiently wide to be satisfied by works of demolition preparatory to the erection of a new building. An indication by the Minister (para. 4, Circular 67 of February 15, 1949) that demolition "may form part of a building operation" was quoted in support of this contention.

Though the development charge (if payable) would in all likelihood have been substantial—estimates varied between £10,000 and £100,000—the Central Land Board accepted this argument without demur and stated that they were satisfied that the building was one to which s. 78 applied.

The suggestion is therefore well substantiated by practical experience.

Yours faithfully,
J. F. Turing.

1 Bank Buildings,
Princes Street, E.C.2.

To the Managing Editor,
Journal of Planning Law.

Town and Country Planning Act, 1947, Sections 23 and 24

Sir,

You may be interested to know that the Appeals Committee of the Lancashire Quarter Sessions sitting at Lancaster on January 3, 1952,

[1] [1951] J.P.L. 718.

to hear an appeal against a conviction under s. 24 (3) of the Town and Country Planning Act, 1947, for an alleged failure to comply with an enforcement notice, held that the notice was bad on the grounds, *inter alia*, (i) that it did not specify the date upon which it became effective and (ii) that it required the steps specified in the notice to be taken within less than 28 clear days after service of the notice. The notice in question was served on September 1, 1949. No appeal to a court of summary jurisdiction under s. 23 (4) had been entered nor any steps taken to challenge the notice prior to the hearing of the summons, which alleged non-compliance with the enforcement notice in June, 1951. For the appellant it was contended that the case could be distinguished from *Perrins* v. *Perrins* [1951] 2 K.B. 414; 1 P. & C.R. 457, on the ground that in that case the court did not direct its attention to the question whether the notice complied with the requirements of the statute as to time. For the respondent it was contended that the judgment of the Divisional Court in *Perrin's* case was in terms wide enough to cover the present case and ought to be followed. The Appeals Committee, which was presided over by A. E. Jalland, Esq., K.C., upheld the contention of the appellant and quashed the conviction. The case was *Fletcher* v. *Bottomley*.

See and compare your article in the September issue, [1951] J.P.L. 506, and the letters from P. Lamb, Esq., K.C., and L. G. Scarman of Counsel in the November issue, [1951] J.P.L. 663.

Yours faithfully,

T. A. Cunliffe,

Philip Kershaw.

60, King Street,
Manchester, 2.

*Notes of Planning Decisions**

Erection of Bungalow in Street of Two-storey Houses

The Minister of Housing and Local Government has allowed an appeal against the refusal of Orpington Urban District Council to permit a bungalow and garage to be built on a plot of land on the east side of Sutherland Avenue, Orpington.

At a local inquiry held into the appeal the council gave as the reason for refusing the application that the bungalow would be out of character with the existing type of two-storey houses in the road. The Minister does not think this argument is valid in a road such as this which does not possess a distinctive architectural character; nor does he consider the design of the proposed bungalow bad enough to justify dismissing the appeal.

[By courtesy of the Public Relations Officer, Kent County Council.]

Conversion of Building Into Dwelling-house—Unsatisfactory Drainage

The following is an extract from the letter of the Minister of Housing and Local Government dated November 29, 1951, dismissing an appeal against the refusal of the County Borough Council of Hastings to grant permission for the carrying out of alterations and additions to a coach house and stable at Hoads Wood Road, Hastings, to convert the building into a dwelling-house.

"The Minister must agree with the council that your proposal to provide cesspool drainage would be unsatisfactory in that pollution could be caused to a neighbouring stream.

I am to add, however, that this decision does not preclude you from submitting a further application to the council embodying a proposal to provide a properly constructed septic tank in lieu of a cesspool."

[By courtesy of the Town Clerk of Hastings.]

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* The Managing Editor desires to express his thanks to those who have been kind enough to send to this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

Erection of Roadhouse—Siting

The following is an extract from the letter of the Minister of Local Government and Planning dated September 3, 1951, dismissing an appeal against the refusal of Hampshire County Council to permit the erection of a roadhouse at Havant Road, Stoke, Hayling Island.

"The proposal is to erect a single-storey restaurant building, capable of serving as many as 200 meals at a time, and it was contended that there is insufficient restaurant accommodation on the island, especially out of the holiday season. Custom would be drawn mainly from passing motorists and to some extent perhaps from mainland residents. It was not intended to apply for a licence at present.

The appeal site is a pleasant, unspoiled part of Hayling Island still rural in character, and quiet, except for the main road traffic. It is about $2\frac{1}{2}$ miles from the sea beach at the southern end of the island. There are houses and cottages along the main road and a few houses lying back from the road behind the site in question. The village of Stoke is a quarter of a mile to the south.

After careful consideration of all the representations made to him on this appeal, the Minister accepts the view of the council that this is not a suitable situation for a restaurant of the kind proposed, such a restaurant would be better sited in or nearer to the seaside town. In the position proposed it would be likely to cause unwarranted disturbance to the pleasantly open residential character of the surroundings."

[By courtesy of the Clerk to the Havant and Waterloo Area Development Sub-Committee.]

Use of Hotel as Unfurnished Rooms

The Minister of Housing and Local Government has announced his decision in an appeal against the refusal of Margate Borough Council to allow four floors at the Cliftonville Hotel, Margate, to be let as unfurnished rooms.

The council refused permission because it thought the change of use of a high-class hotel into a tenement building would be detrimental to the neighbourhood. The sharing of sanitary accommodation was felt to be undesirable and the facilities for such things as laundering and the disposal of refuse inadequate.

Although willing to consider the conversion of the building into self-contained flats, the council considered the present proposals might lead it in time to become a mere slum tenement in the midst of a good residential district.

The Minister agrees with the council that without substantial structural alterations the proposed use is undesirable and would alter the character of the neighbourhood. He appreciates, however, that there are already some 90 people who will need other accommodation. To avoid hardship, therefore, he allows the partial use of the hotel for one year only, and hopes the council will do its best to ensure that the persons concerned are satisfactorily re-accommodated.

[By courtesy of the Public Relations Officer, Kent County Council.]

Establishment of Additional Caravan Camping Site

The following is an extract from the letter dated December 28, 1951, of the Minister of Housing and Local Government dismissing an appeal against the refusal of the Herne Bay Urban District Council to permit the use of a field at Herne Bay as a caravan camping site.

"The Minister is of the opinion that the fact that two caravan camps are already established in the vicinity does not necessarily justify a third. He has noted the representations of the local residents and he agrees with the council that the introduction of more caravans would tend to alter the character of the area, at least during the summer months. The Minister considers therefore that he must uphold the council's decision in this matter."

[By courtesy of the Clerk of the Herne Bay Urban District Council.]

Practical Points

All questions for consideration should be addressed to "The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of replies.

348. *Builders' near ripe land—sale*

A client of ours, who is a builder, is the owner of certain plots which have been designated as near ripe. He now proposes selling these sites at existing use value and indemnifying any purchaser from any development charge that may arise; the purchaser at the same time entering into a building agreement for our client to erect any house on the plot of land.

In your opinion is this practice permissible without forfeiting the benefit of our client's near ripe claim? [D.]

ANSWER

If the land is being sold at "existing use" value I do not understand why the purchaser is to be indemnified against development charge. If the questioner is assuming that the existing use value of near ripe land is its building value, he is in error.

The land should be sold at its "existing use" value ignoring its classification as near ripe (Press Notice C.L.B./9). Alternatively, it may be sold at a price inclusive of development charge provided the charge has been determined. [W. A. L.]

349. *Claims on the £300 million fund—rent controlled houses*

Our clients own five houses on a main road which it is agreed are in every way suitable for conversion into shops.

The properties are, however, all let to controlled tenants under the Rent Restrictions Acts. The District Valuer takes the view that as there is no foreseeable possibility of obtaining possession, due to the Rent Acts, the prospect of conversion into shops is too remote to justify a claim being made

for loss of development value and asks our clients to agree that there is no development value in their interest. [O. C. L. & K.]

ANSWER

The question is, would a purchaser have paid more on account of the potentiality. There must obviously be some deferment of the potentiality. What would a purchaser have thought as on January 7, 1947 (not July 1, 1948, this being a factor affecting the price level)? I am aware of cases in which development value has been agreed despite rent control. [W. A. L.]

350. *Claims on the £300 million fund—curtilage of rent controlled house*

We have a case of a house in one street with a long back garden, which has a frontage to another street. In a number of the houses in this particular street the garden has been divided in half, and the frontage to the back street developed by building another house on it. As the garden is of exceptional length two quite reasonable gardens are attached, one to each house, when this occurs.

The house in question is subject to the Rent Acts, and the District Valuer says that therefore, in his opinion, the open market value of the property was unaffected by the passing of the Act and no compensation is payable. Surely this cannot be right, because apart from the fact that this would exclude from the compensation provisions of the Act the majority of properties with dwelling-houses on them, any application to develop the frontage to the back street would be bound to be accompanied by a demand for payment of a development charge. This indicates loss of development value. The District Valuer's contention seems to overlook the fact that there is nothing in the Rent Acts to prevent a tenant surrendering part of his holding for a suitable consideration by agreement, nor that a prospective purchaser, even with a tenant in, might give more for the property in view of its possibilities in the future when it might become vacant or the Rent Acts might expire, both of which are legally conceivable possibilities. We should be glad of your views. [B. Y. M. & W.]

ANSWER

The question is simply would a purchaser be prepared to pay more because of the alleged potentiality of the back land.

That the premises are rent controlled is a matter affecting value, but it does not *ipso facto* destroy development value. Whether there would be a liability to a substantial development charge is not material. As to land to be included in the claim, see C.L.B./50.[1] If the claim is limited to the back land the question resolves itself into this: would the land command a better market as a building site than for use under s. 12 (2) (*d*) or as garden land to an adjoining dwelling (if there is more than *one* dwelling to which it could be attached—s. 62 (1) and rule 2 of the 1919 Act). S. 61 (6) should not be overlooked.

If the land could only be used as the residential garden land of the claimant's house (*e.g.*, if the other adjoining premises comprise shops, factories or garages) that use must be ignored (? and with it the statutory tenancy). Beyond this the matter is one of valuation, and probably very much a matter of opinion. [W. A. L.]

351. *Claims on £300 million fund — development charge — development restricted by land in other ownership*

A owns a piece of land fronting on to Main Road but with a road running down the flank of the property called Side Road and a road running along the rear of the property called Rear Road. Side and Rear Road were developed by another owner, B, a number of years ago who retained a strip of land one foot wide at the side of Rear Road and Side Road, between those roads and the property owned by A. This is forming a barrier between A's land and the roads. A submitted a claim for loss of development value of his land based upon the development of the frontage to Side and Rear Roads although he did not own the strip. B was an elderly man who was openly offering the strip at a blackmail price to A and other owners in a similar position. In making his claim for loss of development value A assumed he could build on the land but would have to pay B his blackmail price so that the development value was a less figure than would have been the case had the strip of land been in his ownership at that time. In 1951 B died and his executors sold the strip to A for a nominal figure and A is now ready to develop. The District Valuer, in negotiating the claim for loss of development value, refuses to admit the possibility of the strip of land coming into

[1] [1950] J.P.L. 205.

A's possession, and will only deal with the land on a basis of its access from Main Road.

(1) Can this suggestion by the District Valuer be defeated on the grounds that at the worst, the strip of land could be bought for a blackmail price which would still leave a development value in the land, or is the District Valuer right?

(2) Can A reconvey the strip to his wife or other persons and develop the land as garages, lock-up garages, etc., as if there was access only from Main Road, arriving at the development charge on such a basis; then proceed to develop, and then use Side and Rear Roads for access purposes without permission or without paying any charge? [S. E.]

Answer

If a purchaser would have paid more for the property having regard to its potentialities for development in conjunction with such prospects of being able to acquire the strip of land as existed on July 1, 1948, the District Valuer cannot exclude that additional value. It is within the rules of s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919 (s. 62 (1) of the 1947 Act).

The blackmail price is not necessarily the cost to be allowed for acquiring the strip. A purchaser might assume that by holding back (he might have to wait for a licence in any case) the vendor might be induced to become more reasonable, whilst the vendor being elderly there was a chance of that happening which has in fact since happened—the executors selling at a nominal price. One always comes back to this: what view would a purchaser have been likely to take?

Whether the idea for avoiding development charge would work may be doubted. If, as would appear to be the case, Side Road and Back Road are "highways," it is development to form or lay out means of access thereto (s. 119 (1), definition of "engineering operations") so that if the development charge in the normal way would be £X it will still be £X in total even if divided between the main plot for the buildings and the strip for means of access. [W. A. L.]

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"Planning Law" Notes

It is with deep regret that we record the sudden and unexpected death at Sandringham of His Majesty King George VI on February 6, 1952.

We venture to offer our sympathy to the Queen-Mother, to Queen Mary and to our new Sovereign Queen Elizabeth II.

The Lands Tribunal have allowed two appeals against determinations by the Central Land Board under Part VI of the Act of 1947. The Board had held that there was no development value in premises at Kensington for the purposes of claims on the £300 million fund. The Tribunal have decided that on July 1, 1948, the premises, comprising shops and flats, would have had a higher market value for conversion to offices than for their existing use, notwithstanding the effect of Defence Regulation 68CA.

These cases, which are noted at pp. 160, 161, *post*, are the first in which Part VI appeals have been successful.

The Committee on Local Land Charges appointed by the Lord Chancellor in March, 1949, has issued a report, which has been presented to Parliament and published (Cmd. 8440, 2s. 6d. net). The list of witnesses who submitted evidence to the Committee contains two names which will be well known to readers of this Journal, namely, those of Mr. Desmond Heap and the late Dr. Harold Potter, whilst the Committee also acknowledge the help they received from the book on *Local Land Charges* by Mr. J. F. Garner, another regular contributor to these pages.

A summary of the recommendations of the Committee is printed at p. 156, *post*.

A Town Development Bill was presented to Parliament by the Minister of Housing and Local Government on January 31, 1952, and received its first reading (*post*, p. 152). One of its clauses provides for the repeal of s. 19 (5) of the Act of 1944 as embodied in the Eleventh Schedule to the Act of 1947, which has hitherto limited the disposal of land acquired by a local authority under planning powers.

Between July 1, 1948, and December 31, 1951, the number of applications to develop land dealt with in the County of Kent was 40,354. About 83 per cent. of these were decided by the borough and urban and rural district councils within the county, under powers delegated to them by the county council, and the remainder by sub-committees of the County Planning Committee.

An interesting decision of the Lands Tribunal on the subject of compensation for goodwill following the revocation of a planning permission is noted at p. 158, *post*.

Mr. W. A. Leach writes: Having recently acquired new spectacles and re-read art. 2 of the Use Classes Order, 1950, I find that I have hitherto missed the word "office" in the exclusion from the meaning of "shop" therein, which was one of the amendments of the 1948 Order. The statement in the penultimate paragraph of my article of the "Definition of 'Shop'" (ante, p. 88) is therefore incorrect. I hope my confession of error precedes letters of correction from your readers.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the MANAGING EDITOR, Journal of Planning Law, 3 CHANCERY LANE, LONDON, W.C.2. *Every attempt will be made to return drafts or unsuitable copy but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Land Planning and the Powers of the Executive

By Desmond Heap, ll.m., l.m.t.p.i.,

Comptroller and Solicitor to the Corporation of the City of London

An Address to the Royal Institution of Chartered Surveyors, February 4, 1952

I. Introductory

1. The growing powers which the Legislature, acting through the medium of a sovereign Parliament, has in recent times conferred upon the Executive, and the inability of the Judiciary, for one reason or another, to control in any substantial fashion the exercise of those powers, is a topic of increasing interest on which much has been (and is being) written and spoken. I here confine myself to the powers of the Executive in connection with land planning in town and country, and within this particular sphere the Executive achieves embodiment in a Minister of the Crown who is called, at least for the moment, " the Minister of Housing and Local Government."

2. Within the sphere of land planning, the powers of the Executive can be investigated under two heads relating first to delegated legislation, and secondly to the administrative acts of the Minister. I propose to deal with each of these in turn and to conclude with some observations (which arise out of investigations under the second head) on the subject of local inquiries held by the Minister in connection with his discharge of duties, and his exercise of powers, conferred upon him by the Legislature.

II. Delegated legislation

3. Though there were earlier instances of delegated legislation, it was during the Great War of 1914–1918 that the principle of delegated legislation was first put into really active use. Under this principle, Acts are passed by Parliament, but they are enacted in outline only and the details of their contents remain to be fashioned by Ministers of the Crown in the form of what were originally called Statutory Rules and Orders but which, since the Statutory Instruments Act, 1946, have been termed Statutory Instruments made by

the appropriate Minister acting under powers conferred upon him by the enabling Act.

4. Pressure of events during periods of international warfare require that something of this sort shall be done but the use of delegated legislation during the 1914–1918 War under the enabling Act known as the Defence of the Realm Act (or DORA, as it was popularly termed) was then regarded as a matter of emergency only. The practice, however, having been used for war purposes, stayed to be employed in the comparative peace of the 1920's for more normal and general purposes and, after some criticism, notably by Lord Hewart (then Lord Chief Justice) on its continued use in time of peace, the Committee on Ministers' Powers was appointed, under the chairmanship of the Earl of Donoughmore, to inquire into the practice, the Report of the Committee being published in April, 1932 (Cmd. 4060).

5. The practice remained comparatively inactive, though not entirely dormant, until the outbreak of hostilities in 1939 when an emergency, again created by war, brought about a flood of delegated legislation. The enabling Act in this instance was the Emergency Powers (Defence) Act, 1939, under the authority of which a host of statutory instruments in the form of Rules, Regulations or Orders, have been made by departments of the central government. All these instances of delegated legislation were regarded as inherently temporary by reason of the fact that the Emergency Powers (Defence) Act, 1939, was itself of temporary duration and was extended from year to year until 1945 when it was replaced by the Supplies and Services (Transitional Powers) Act, 1945, which is again temporary by nature and by s. 8 was due to expire on December 10, 1950, though provision is made (in s. 8 (1)) for it to be continued on a yearly basis thereafter. It now stands continued in force until December 10, 1952.

6. Hostilities ceased in 1945, but delegated legislation has continued to flow under "permanent," as distinct from "temporary," Acts of Parliament passed since then, including especially the Town and Country Planning Act, 1947. Indeed, in the 10 years following the outbreak of war in 1939 some 23,000 Statutory Instruments were made by various Government Departments under different Acts of Parliament. The practice continues at a substantial rate.

7. The Town and Country Planning Act, 1947, contains 120 sections and 11 schedules and fills 206 pages of a King's printer's copy of the Act. Under the statute, however, the

Minister of Housing and Local Government has made some 48 Orders and Regulations filling in the details of the statute and these now embrace about 280 closely printed pages or 74 more pages than the Act of Parliament itself.

8. It is sometimes said that only matters of detail or of trifling importance or day to day occurrence are left by Acts of Parliament to be " legislated " for by Ministers through the medium of delegated legislation. This has frequently been the case under the 1947 Act, although in one respect, at least, the Minister, functioning under the Act, has legislated on a matter of fundamental principle. When the Act was debated in Parliament it was said that in the levying of a development charge upon the carrying out of " development " within the meaning of the Act, the Central Land Board was to be given a free hand so as to be able to levy a charge representing, say, 40 per cent. or 60 per cent. or perhaps 100 per cent. of the increase in value of the land attributable to the grant of planning permission for the development in question. There was to be no fixing of a rigid rate of development charge which the Central Land Board would be bound to impose in all cases (*vide* the Lord Chancellor's speech, House of Lords, Official Report, vol. 148, col. 273). But when the Minister, acting under s. 70 (3) of the Act, made the Town and Country Planning (Development Charge) Regulations, 1948,[1] it was found that in prescribing general principles to be followed by the Board in determining the amount of a development charge in any particular case, he had effectively prevented the Board from imposing any charge other than a 100 per cent. charge. This cannot be regarded as a matter of detail or routine—it is something which goes to the root of the 1947 Act.

9. No reference to the power of the Executive to legislate under the aegis of an enabling Act of Parliament can be made without mention of the Select Committee on Statutory Instruments first appointed by the House of Commons in 1944, and one of whose reports was responsible for the enacting by Parliament of the Statutory Instruments Act, 1946. The appointment of this Select Committee (popularly called " the Scrutinising Committee ") derives from a recommendation in the 1932 Report of the Donoughmore Committee on Ministers' Powers which stated (at p. 67) that—

" XIV. Standing Orders of both Houses should require that a small

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[1] [1948] J.P.L. 241.

Standing Committee should be set up in each House of Parliament at the beginning of each Session for the purpose of—

(*a*) Considering and reporting on every Bill containing a proposal to confer law-making power on a Minister;

(*b*) Considering and reporting on every regulation and rule made in the exercise of the delegated legislative power, and laid before the House in pursuance of statutory requirement."

10. This recommendation was not acted upon until 1944 but the Scrutinising Committee can now draw the attention of the House of Commons to any statutory instrument which, *inter alia*, is made in pursuance of an enactment which specifically excludes it from challenge in the courts; makes " unusual or unexpected use " of the powers conferred by the enabling Act of Parliament; or whose form or purport, for any special reason, calls for elucidation.

11. Whether the powers of the Scrutinising Committee are wide enough is a matter on which opinions differ but its functioning must undoubtedly act as a curb on excessive legislative zeal on the part of any Minister in the exercise of powers associated with delegated legislation. That these powers can at times be used awry is shown by the facts in *Blackpool Corporation* v. *Locker* [1948] 1 K.B. 349; and *Patchett* v. *Leathem* (1948) 65 T.L.R. (Pt. 2) 69.

III. The administrative acts of the executive

12. It is one of the outstanding features of the Town and Country Planning Act, 1947, that matters touching land planning and development are, in the last resort, now left for determination exclusively by the Minister of Housing and Local Government without any opportunity of questioning his decision by way of appeal for the purpose of testing its merits or for the purpose of allowing second thoughts to prevail as a result of further reflection.

13. Over and over again throughout the Act appear the words " If it appears to the Minister that it is expedient . . . ," or " If the Minister is satisfied that it is expedient . . . ." There is no possibility of getting at the root of the matters which cause the Minister to be satisfied as to the expediency of any particular course of action, or of finding out whether there is any reasonable cause for it appearing to the Minister to be expedient to do any particular thing (*vide*, for pertinent decisions under other Acts and regulations, *Liversidge* v. *Anderson* [1942] A.C. 206; *Point of Ayr Collieries, Ltd.* v. *Lloyd-George* [1943] 2 All E.R. 546; *Carltona, Ltd.* v. *Commissioners of Works and Others* [1943] 2 All E.R. 560).

14. Since the conclusion of hostilities in 1945 efforts have been made in a number of cases arising out of the law of planning to "test" by way of appeal to the courts acts of the Minister having important and far-reaching consequences on land development. There has been some confusion of thought on the powers of the Minister in this respect; but the cases which I shall quote clear the air and demonstrate how extensive are the Minister's powers under such planning enactments as the Town and Country Planning Act, 1944, the New Towns Act, 1946, and, by inference, the Town and Country Planning Act, 1947.

15. In *Phoenix Assurance Co.* v. *Minister of Town and Country Planning* [1947] 1 All E.R. 454, the ministerial act which was questioned was the making of a declaratory order under subs. (1) of s. 1 of the Town and Country Planning Act, 1944 (which subsection used the words "Where the Minister . . . is satisfied that it is requisite . . . ") declaring certain war-damaged land to be liable to compulsory purchase by a local authority. In challenging the order it was argued that before making it the Minister must have reasonable grounds for coming to the conclusion (required by the words of s. 1 (1) of the Act) that the making of the order "is requisite."

16. In *Liversidge* v. *Anderson* [1942] A.C. 206, it had been held that the making of a detention order by the Home Secretary under reg. 18B of the Defence (General) Regulations, 1939, was a matter purely for the executive discretion of the Home Secretary who, accordingly, could not be required to state the grounds on which he claimed to have "reasonable cause to believe [a person] to be of hostile origin or associations," this being a condition precedent to his making a detention order.[2] This decision was distinguished by Henn Collins J. in the *Phoenix Case* on the ground that Defence Reg. 18B was a temporary measure designed to meet a war-time emergency, whereas the making of a declaratory order under s. 1 (1) of the Town and Country Planning Act, 1944, was in no way a temporary matter but something which derived from the general law of the land and, moreover, something which, under the said s. 1 (1), *could be made only after the holding of a public inquiry and the consideration by the Minister of objections made at such inquiry.* Accordingly,

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[2] In *Nakkuda Ali* v. *Jayaratne* [1951] A.C. 66 (a Privy Council decision), the Privy Council placed a limitation on the application of the *Liversidge Case*, namely, that the construction adopted there is not one of general application.

the decision in the *Liversidge Case* was not followed by the learned judge, who held that the making by the Minister of a declaratory order under s. 1 (1) of the Town and Country Planning Act, 1944, was not a matter which fell so exclusively within the Minister's administrative capacity that the courts could not inquire into the merits of the grounds on which the Minister had satisfied himself that it was necessary, or requisite, to make the declaratory order. *In short, the decision in the Phoenix Case bestowed upon those public inquiries which, under planning enactments, the Minister frequently has to hold before taking executive action, a status which later cases by higher judicial authority were soon to show they do not possess.*

17. The decision in the *Phoenix Case* was disapproved by the Court of Appeal in *Robinson* v. *Minister of Town and Country Planning* [1947] K.B. 702, where it was held that in making a declaratory order under s. 1 (1) of the Town and Country Planning Act, 1944, the Minister is acting as an executive authority only, the executive act of making the order being neither a judicial nor a quasi-judicial decision and the Minister, in consequence, being entitled to base his opinion (on which the making of the order depends) *on whatever materials he thinks fit* whether obtained in the ordinary course of his executive functions or derived from what is brought out at a public inquiry, the Minister in no case being bound to disclose the source of his information. The words of Lord Greene M.R. at p. 716 are illuminating:—

"To say that, in coming to his decision he is in any sense acting in a quasi-judicial capacity is to misunderstand the nature of the process altogether. I am not concerned to dispute that the inquiry itself must be conducted on what may be described as quasi-judicial principles, but this is quite a different thing from saying that any such principles are applicable to the doing of the executive act itself, *i.e.*, the making of the order. The inquiry is only a step in the process which leads to that result, and there is, in my opinion, no justification for saying that the executive decision to make the order can be controlled by the court by reference to the evidence or lack of evidence at the inquiry which is here relied on. Such a theory treats the executive act as though it were a judicial decision (or, if the phrase is preferred, a quasi-judicial decision) which it most emphatically is not. How can this Minister, who is entrusted by Parliament with the power to make or not to make an executive order according to his judgment and acts bona fide (as he must be assumed to do in the absence of evidence to the contrary), be called upon to justify his decision by proving that he had before him materials sufficient to support it? Such justification, if it is to be called for, must be called for by Parliament and not by the courts, and I can see no ground in the language of the Act, in principle or in authority,

for thinking otherwise. As I have already indicated earlier in this judgment, the argument on behalf of the applicants necessarily involves in the last resort substituting the opinion of the court for that of the Minister. Different considerations, of course, apply in a case where a Minister can be shown to have overstepped the limits of his statutory powers, as, *e.g.*, where the conditions in which they may be exercised are laid down in the statute and he purports to act in a case where those conditions do not exist. The applicants' attempt to bring the present case into that category fails, as I have said, on the true construction of the statutory powers conferred."

18. In *Franklin* v. *Minister of Town and Country Planning* [1948] A.C. 87, the House of Lords affirmed the decision of the Court of Appeal reversing the decision of the court of first instance where Henn Collins J. had held that in making a designation order designating land at Stevenage as the site of a new town under the New Towns Act, 1946, s. 1 (1), the Minister was acting in a quasi-judicial, and not in a purely administrative, capacity and that he had not approached the matter with an open mind but had in fact shown bias, with the result that the Stevenage New Town (Designation) Order, 1946, was bad. In his judgment Lord Thankerton said (at p. 102):

"In my opinion, no judicial, or quasi-judicial, duty was imposed on the respondent, and any reference to judicial duty, or bias, is irrelevant in the present case. The respondent's duties under s. 1 of the Act and the First Schedule thereto are, in my opinion, purely administrative, but the Act prescribes certain methods of, or steps in, discharge of that duty. It is obvious that, before making the draft order, which must contain a definite proposal to designate the area concerned as the site of a new town, the respondent must have made elaborate inquiry into the matter, and have consulted any local authorities who appear to him to be concerned, and obviously other departments of the Government, such as the Ministry of Health, would naturally require to be consulted. It would seem, accordingly, that the respondent was required to satisfy himself that it was a sound scheme before he took the serious step of issuing a draft order. It seems clear, also, that the purpose of inviting objections, and, where they are not withdrawn, of having a public inquiry, to be held by someone other than the respondent, to whom that person reports, was for the further information of the respondent, in order to the final consideration of the soundness of the scheme of the designation; and it is important to note that the development of the site, after the order is made, is primarily the duty of the development corporation established under s. 2 of the Act. I am of opinion that no judicial duty is laid on the respondent in discharge of these statutory duties, and that the only question is whether he has complied with the statutory directions to appoint a person to hold the public inquiry, and to consider that person's report."

At p. 106 Lord Thankerton continued:

"The object of the [public local] inquiry is further to inform the

mind of the Minister, and not to consider any issue between the Minister and the objectors."

19. From the decisions in *Robinson's Case* and (by the highest court in the land) in *Franklin's Case*, it is now clear that in making declaratory orders under the Town and Country Planning Act, 1944, and New Town Designation Orders under the New Towns Act, 1946, the Minister is acting administratively only, and that the holding of any public inquiry is for the better and further information of the Minister's mind. Questions of bias on the part of the Minister or of his not coming to the matter with an open mind are entirely irrelevant. Whilst the officer of the Minister who holds the public inquiry must conduct it judicially (or quasi-judicially) in that he must allow all parties concerned an opportunity of presenting their cases ("I am not concerned to dispute that the inquiry itself must be conducted on what may be described as quasi-judicial principles . . . "—Lord Greene M.R. in *Robinson* v. *Minister of Town and Country Planning* [1947] K.B. 702 at p. 716) the Minister's duty is simply to give a genuine consideration to the report of his officer, but the report itself is not binding upon the Minister nor does it fetter in any way the free exercise of his discretion. In other words, the holding of the public inquiry and the Minister's executive act of making the order are two distinct and separate operations, and whilst the holding of the inquiry may be a statutory condition precedent to the making of the order by the Minister, the holding of the inquiry on the one hand, and the making of the order consequent, *but not dependent*, upon the inquiry on the other hand, must be clearly distinguished.

20. In so far as cases like *Errington* v. *Minister of Health* [1935] 1 K.B. 249, *Frost* v. *Minister of Health* [1935] 1 K.B. 286, *Offer* v. *Minister of Health* [1936] 1 K.B. 40, and *Horn* v. *Minister of Health* [1937] 1 K.B. 164 (all decided under the Housing Act, 1936) are dependent on the theory that the Minister of Health in deciding whether or not to confirm a clearance order or a compulsory purchase order made under the Housing Act, 1936, by a local authority is bound to act judicially, it is submitted that they must now be regarded as impliedly overruled by the House of Lords' decision in *Franklin's Case*.

21. In this connection, it may be noted that *Robinson's Case* and *Franklin's Case* were both cases in which the ministerial order in question was an *original* order made by a

Minister himself under the Town and Country Planning Act, 1944, and the New Towns Act, 1946, respectively. In the cases of *Errington*, *Frost*, *Offer* and *Horn*, the order in dispute was in each instance an order made in the first place by a local authority and submitted to a Minister (namely, the Minister of Health) for *confirmation* (*i.e.*, not for *original making*) by him under the Housing Act, 1936. But it is now clear from the decision in *Johnson & Co. (Builders), Ltd.* v. *Minister of Health* [1947] 2 All E.R. 395, that in deciding whether (a) *to make* an order, or (b) *to confirm* one already made by a local authority, the Minister concerned, having caused to be held in a judicial or quasi-judicial manner any public inquiry which, in the circumstances, is required by statute, is acting administratively and not otherwise.

22. In *Johnson's Case* (a case under the Housing Act, 1936) Lord Greene M.R. said (at p. 399):

"The administrative character in which he (the Minister) acts reappears at a later stage because after considering the objections, which may be regarded as the culminating point of his quasi-judicial functions, there follows something which again, in my view, is *purely administrative, viz., the decision whether or not to confirm the order.*[3] That decision must be an administrative decision, because it is not to be based purely on the view which he forms of the objections, *vis-à-vis* the desires of the local authority, but it is to be guided by his view as to the policy which in the circumstances he ought to pursue . . . . It is in respect of the public interest that the discretion that Parliament has given to the Minister comes into operation. It may well be that, on considering the objections, the Minister may find that the objections are reasonable and that the facts alleged in them are true, but, nevertheless, he may decide that he will over-rule them. *His action is a purely administrative action based on his conceptions as to what public policy demands.*[3] His views on that matter he must, if necessary, defend in Parliament, but he cannot be called on to defend them in the courts."

23. None of the cases so far quoted is a decision under the Town and Country Planning Act, 1947, but there is no doubt that the principles enunciated in these cases apply to the vast majority of the instances where the Minister of Housing and Local Government is empowered to take action under the 1947 Act, including particularly his powers in connection with the approval of development plans under ss. 6 and 10 of the 1947 Act, and the making or confirmation of compulsory purchase orders for land under ss. 37, 38, 39, 41 and 43 of the 1947 Act and the applied provisions of the Acquisition of Land (Authorisation Procedure) Act, 1946. There was at one stage some lingering doubt as to whether, after the conclusion of a

[3] The writer's italics.

public inquiry at which objections to a development plan had been heard, the Minister could then consult privately, and in the absence of the objectors, with the local planning authority which had submitted the development plan or with other bodies or persons. For the purpose of removing such doubts and making it clear that the Minister can in such circumstances do this sort of thing, subs. (3) of s. 10 of the 1947 Act was introduced on the third reading of the Bill in the House of Commons and enacted by the Legislature.

24. In *Associated Provincial Picture Houses, Ltd.* v. *Wednesbury Corporation* [1948] 1 K.B. 223, Lord Greene M.R. was discussing the exercise of discretionary powers by a local authority but his words apply equally well to the exercise of ministerial discretion when he says (at p. 228):

"When an executive discretion is entrusted by Parliament to a body such as the local authority in this case, what appears to be an exercise of that discretion can only be challenged in the courts in a strictly limited class of case. As I have said, it must always be remembered that the court is not a court of appeal. When discretion of this kind is granted the law recognises certain principles upon which that discretion must be exercised, but within the four corners of those principles the discretion, in my opinion, is an absolute one and cannot be questioned in any court of law. What then are those principles? They are well understood. They are principles which the court looks to in considering any question of discretion of this kind. The exercise of such a discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters. Conversely, if the nature of the subject-matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, the authority must disregard those irrelevant collateral matters."

Again, at p. 224, his Lordship said:

"The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority have contravened the law by acting in excess of the powers which Parliament has confided in them."

The following qualification by Lord Greene M.R., at p. 683, may be noted:

"It is true to say that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere."

25. One further quotation from the cases may be given. It is from the judgment of Henn Collins J. in *Miller* v. *Minister of Health* [1946] K.B. 626 at p. 628, and was quoted with approval by Lord Greene M.R. in *Johnson & Co. (Builders)*,

Ltd. v. *Minister of Health* [1947] 2 All E.R. 395 at p. 403. Henn Collins J. said:

"I think one must remember in approaching these matters that the question what a Minister shall or shall not do when acting administratively is not one that can be determined on any principle of law, nor yet on any principle, as I see it, of natural justice, as between the Minister and any one member of the community. *The Minister, acting in his administrative capacity is governed by considerations of expediency only.*[4] He has to decide—ultimately, I suppose, subject to the review and governance of Parliament—what in his view is best for the community."

26. The deduction to be drawn from the cases which I have quoted is that, put shortly, the courts cannot be persuaded to interfere in a matter involving the exercise of ministerial discretion unless the action of the Minister is clearly *ultra vires* the statute under which he purports to act, or unless he has behaved so unreasonably that he must be regarded as having made no genuine exercise of his discretion at all. It is felt that any Minister will be able to avoid both of these pitfalls without being sensible of any particular restriction on the free exercise of his discretion. Once a Minister can say that he has *genuinely considered* the matters before him (*i.e.*, that his mind is not so foreclosed as to preclude any genuine consideration of them) then the courts will not interfere with his decision, and the fact that he has shown bias, or is not fair-minded or open-minded, does not enter into the matter at all. Provided the Minister says he "is satisfied" (to quote the oft used words of the 1947 Act) then the courts are unable to go either into, or behind, the Minister's averment of his own satisfaction. The words of the Lord Chancellor in a debate on the Bill which became the Town and Country Planning Act, 1947 (*vide* House of Lords, Official Report, vol. 148, cols. 274 and 275) may here be noted for he said:

"It is the fact that the Minister under this Bill will have very considerable powers. I myself think that that is inevitable. I believe that it springs from the idea that we are going to have positive planning . . . I am satisfied that the Minister must have these very considerable powers. *I do not think that that is a justiciable matter which admits of any appeal to the courts. I think that appeal should be to the High Court of Parliament and Parliamentary criticism.*"[4]

27. Just how much is given over by the Town and Country Planning Act, 1947, to the free discretion of the Executive, subject only to parliamentary criticism, can be imagined when

[4] The writer's italics.

it is appreciated that under the 1947 Act the Minister is able to act in his executive or administrative capacity in connection with—

(1) the approval of development plans (ss. 5 and 10);
(2) the making by the Minister, in default by a local planning authority, of a development plan (s. 7);
(3) the making or confirmation of compulsory purchase orders (ss. 37, 38, 39, 41 and 43);
(4) the granting of applications for planning permission (s. 15);
(5) the determination of planning appeals (s. 16);
(6) the confirmation of purchase notices (s. 19);
(7) the confirmation of revocation orders (s. 21);
(8) the confirmation of modification orders (*ibid.*);
(9) the approval of agreements controlling development (s. 25);
(10) the confirmation of orders for the discontinuance of authorised uses or the removal of authorised buildings (s. 26);
(11) the confirmation of tree preservation orders (s. 28);
(12) the confirmation of building preservation orders (s. 29);
(13) the determination of advertisement appeals (s. 31 and the Town and Country Planning (Control of Advertisements) Regulations, 1948, reg. 20);
(14) the confirmation of modification orders and revocation orders with respect to the display of advertisements (*ibid.*, reg. 21);
(15) the approval of orders defining areas of special control in respect of advertisements (*ibid.*, reg. 10);
(16) the exercise of any of the default powers of the Minister (s. 100);
(17) the grant of consent to the disposal of land by a local authority (s. 19 of the 1944 Act); and
(18) the grant of consent to the development of land by a local authority (s. 20 of the 1944 Act).

IV. Local inquiries in connection with land planning

28. I turn, finally, to some observations on local inquiries held in connection with land planning and development.

29. It will be appreciated that the holding of a public local inquiry under the Town and Country Planning Act, 1947, or the New Towns Act, 1946, is often (though not always) a condition precedent to the doing by the Executive of an

administrative act in the exercise of the discretionary powers conferred upon it by the Legislature. If the local inquiry were not held (when the statute requires that it should be) then, clearly, the subsequent administrative act would be *ultra vires* and could be upset by the Judiciary. It is also clear that the inspector who actually holds the inquiry should do it in a "calm, judicial frame of mind." Procedure at these inquiries is well known to us all and I do not recount it here. I turn rather to criticisms frequently heard concerning these inquiries. It is complained that—

(1) the inquiry is held by the Minister's own inspector instead of by some entirely independent person;
(2) the inspector's report is secret; and
(3) there is no appeal from the Minister's decision following the inquiry.

30. It seems to me that these criticisms are based on a fundamental misunderstanding of the role played by the Minister whether he is making new town designation orders, making compulsory purchase orders himself or confirming such orders when made by others, approving development plans, determining planning or advertisement appeals, or, indeed, doing any of the many other things mentioned previously in para. 27.

31. In doing all these things the Minister is acting in furtherance of a policy on which he is entitled, by Act of Parliament and subject to criticism in Parliament, to have the last word. The Legislature has said that he shall have it. It cannot be too strongly emphasised that by statute (not, be it noted, the revolutionary—as it has been called—1947 Act nor the 1946 New Towns Act, but the Minister of Town and Country Planning Act of 1943, the Act which first gave land planning a Ministry of its own) the Minister is—

> " . . . charged with the duty of securing consistency and continuity in the framing and execution of a national policy with respect to the use and development of land throughout England and Wales."

These are highly important words for they make policy considerations paramount in connection with most of the administrative decisions on land planning which have to be taken by the Executive. Rightly or wrongly (and whether it is right or wrong is not for the Executive but for Parliament to say) the Minister is the sole judge of policy; the Act of 1943 clearly makes him so.

32. Once this is fully appreciated, does it, I would ask, matter that the local inquiry is held by the Minister's own

inspector? The Minister is not there to dispense justice but to carry out a policy. That is why he is not obliged to follow the report of his inspector if policy considerations require otherwise—the report, it is submitted on the authorities quoted earlier, is only for the better informing of the mind of the Minister who, having genuinely considered it, may reject it. It is, I admit, a debatable point, but if the report is not binding on the Minister, is there anything specially to be gained from its publication? Especially may this be asked, I think, when it is remembered that there is no way of challenging whatever decision the Minister may give provided he has not acted *ultra vires* or in bad faith.

33. Is not the position simply that in all these town planning or new town local inquiries the Legislature has so framed the relevant enactments that policy is paramount, and for matters of policy is it not clear that the Executive must be exclusively responsible subject only to control by Parliament itself? Where policy is *not* paramount then, of course, other considerations apply.

34. So far, however, as concerns those powers of the Executive with which I have chosen to deal in this address, namely, the powers appertaining to land planning, I think it is clear that in the many administrative decisions at which the Executive must arrive in the execution of those powers, the furtherance of a particular policy of land planning, for which the Minister is answerable to Parliament, must necessarily prevail.

35. This is not to say that these local inquiries perform no useful purpose and in fact do no more than provide an opportunity for "letting off steam" (as it has been said) by the objectors. As I have stated, the inquiry itself must be fairly held for all concerned, and the Minister must genuinely consider his inspector's report. That being so, may it not well be that points made by objectors at the inquiry will have their effect on the Minister's mind, thereby helping to form the decision at which the Minister ultimately arrives and so playing a part in the shaping of the policy for which the Minister must, in the final analysis, himself accept responsibility? After all, many planning appeals are allowed by the Minister and not all the compulsory purchase orders made by local authorities are confirmed by him. Whatever its limitations, there can, I think, be no doubt that the local inquiry is a safeguard not lightly to be discarded.

The Examination of a Development Plan[1]

By Patrick Stirling, Barrister-at-Law

During the last six months the number of development plans submitted to the Minister for his approval has steadily increased. Experience has shown, however, that the mass of information collected and the method of presentation have often bewildered and confused landowners, ratepayers and those industrial and commercial organisations which may be concerned with the plan. They have found it difficult to find their way through the statements, surveys, reports, analyses and maps and to pick out the salient points of policy and the full scope of the proposals as they might affect their interests. In spite of every effort by a planning authority to explain their proposals in simple terms much of the information required is of a technical nature and the presentation of the plan has to follow a form prescribed by the Minister. It may, therefore, be helpful to describe some of the major duties of a planning authority in preparing a plan, their methods of investigation, the nature of the development plan itself and some of the more important points which should be carefully examined before the public inquiry. These will be a guide when considering whether an objection should be lodged or not.

The duties of a planning authority

The Act of 1947 requires that as soon as may be after July 1, 1948, every local planning authority shall (i) carry out a survey of their area, and (ii) submit to the Minister, not later than July 1, 1951 (or within such extended period as the Minister may in any particular case allow):

(a) a report of the survey; and

(b) a development plan

showing the manner in which they propose that land in their area should be used, and the stages by which such development should be carried out. The first step, therefore, in the preparation of a plan is the survey and report.

[1] This article will be concluded in our next issue.

The Survey

The survey and report should have brought together all the relevant evidence and they deserve careful study. One should find in these documents a comprehensive and detailed analysis of the present state of the area from every aspect; one should also find an assessment of the problems which have emerged and an estimate of its future growth and needs. Without such a survey no plan could be of much value.

The subjects on which information is required have been set out in a number of circulars, and among the most important are the following:—

I. *Physical Conditions.* (a) Existing land use. The Minister has said that physical planning must be based on an accurate knowledge of existing land use and that maps should be prepared to show the predominant uses of all land in the planning area. (b) Age and condition of buildings. The physical condition of buildings will be an important factor in determining the need for redevelopment and maps should show, for each area in respect of which a town map is being prepared, the buildings erected before 1875, between 1875 and 1914, and since 1914, buildings which have suffered extensive war damage, buildings condemned under the Housing Acts, and other classifications set out. From the information so obtained and considered in conjunction with other factors such as density, mixture of uses, layout and structural condition, it will be possible to define (i) areas requiring redevelopment, (ii) areas becoming obsolete, but which still retain some years of useful life, and (iii) areas not likely to require redevelopment for many years. (c) Residential density. A knowledge of existing residential density in different parts of towns will be needed in order to determine future density standards, to estimate the extent of overcrowding and to assist in deciding the order in which redevelopment of areas should take place.

II. *Population.* Any estimate of the size and composition of the future population of an area is obviously a matter of great difficulty. As a first step, forecasts will have been made of the future population in 20 years' time, which will have taken into account only natural changes due to births and deaths and will have ignored migratory movements. In certain parts of the country substantial movements of population, due to shifting employment and planned overspill (brought about through Government action) will have to be taken into account. This problem is one of great difficulty

and will be examined further when we come to the development plan itself. At this stage, however, it is necessary to examine the survey with care so as to make certain that the proposals for the future are soundly based.

III. *Industry and Commerce.* No survey maps in respect of industry are specifically called for by the Minister. It will, however, probably be found that the planning authority has, where necessary, carried out a survey to show the extent and distribution of industry. The existing acreage may have been measured and compared with a figure prepared some years ago, from which comparison recent trends in movement can be shown. In addition specialised surveys may have been undertaken in conjunction with a local Chamber of Commerce or in relation to a special category of industry. The methods adopted by planning authorities in carrying out industrial surveys will, no doubt, be found to vary considerably, and no hard and fast rule can be laid down. It is important, however, to discover the exact extent of the inquiries which have been made in relation to industrial development and the basis on which they have been prepared.

IV. *Communications.* Circular 40 requires, in order to assist in determining the future road pattern, that maps should be prepared to show the existing road system; proposed new trunk and main roads; major proposals for road widenings; the routes of regular omnibus services in rural areas and the position of omnibus and coach stations and the principal parking areas. Those surveys will show the volume, characteristics, origin and destination of traffic and show what improvements are necessary. These surveys should also cover the current and potential volume of air traffic: ample provision should be made for its future expansion.

Among other information shown will be land or buildings held by Government Departments, details of public utility services, such as water supply and sewerage systems, gas supply and land drainage. Much of the essential survey work on the location of education facilities will already have been done in connection with development plans for primary and secondary education and schemes for further education under the Education Act, 1944. Where local education authorities already own land for educational purposes, this information also will have been recorded.

These and other surveys will form the background against which the development plan has been prepared. Every effort will have been made to record the information accurately, but

it will not have been possible to examine every building. It is on these surveys that the report which is submitted to the Minister will be based.

The Analysis. Some points for examination

The Minister has directed that this report of the survey should be presented in the form of a Written Analysis supported by a number of summary maps. These maps will be small-scale versions of the original survey maps. The Act requires the submission of this document, but it does not require the Minister formally to approve it and it must be distinguished from the Written Statement which is part of the development plan which requires ministerial approval. It may be found useful to look now at one or two of the more important problems with which an inquirer may be concerned and to suggest some factors which should be borne in mind when examining a development plan. This should help to answer important questions such as: Are the proposals realistic and practical? Are they likely to be carried out within the 20-year period? Is the plan sufficiently flexible? Has a proper balance been struck between national policy and local needs? Are alternative sites available for a particular project?

Industry

The problem of industrial planning is one of the most difficult of the problems in developed urban areas with which planning authorities will have to cope. This is largely due to the limitation of planning powers in this respect, coupled with the present stringent limitation on capital expenditure. It seems probable that it is in this sphere that least progress will be made—at least as far as existing urban areas are concerned. In many such areas an intermixture of industry, commerce and homes has grown up and it is unlikely that much progress will be made in the near future towards securing a substantial relocation of industry and the elimination of non-conforming users. An example of the practical limitations on what can be achieved is to be found in the preservation, through the Town and Country Planning Act, 1947, of rights in respect of the existing use of land and in the limited rights of extension also conferred. In addition, the General Development Order, 1950, permits the extension of industrial buildings up to 5,000 square feet without planning permission, which could of itself bring about a substantial

increase in local employment. The Use Classes Order also permits a change of use within a category without planning consent, with the result that industrial sites, which a planning authority may wish to eliminate, can change hands without the fact coming to the knowledge of the authority. It appears no exaggeration to say that the opportunities to bring about the relocation of non-conforming industry are today limited to what can be achieved by available financial resources which are virtually non-existent in present-day conditions. It is suggested, therefore, that any ambitious and large-scale plans for the relocation of industry should be critically examined in the light of the limitations which at present exist.

Shops

The development plan should make proper and adequate provision for shopping facilities and it is still true today that the single trade and singly owned shop is the mainstay of our shopping industry and community. Proposals may be shown for some new shopping centres and for the replanning of existing ones: the authority may have come to the conclusion that in some areas there are too many shops and their policy is to reduce them, while in other cases new shopping centres may be required. It will not, however, have been possible to plot every single shop frontage on the maps, but it will nevertheless be important to discover the intention of the authority where existing frontages are not shown, and whether or not removal is intended. At the public inquiry it should be established beyond doubt whether or not the fact that a particular shop is not shown as such on the basic map indicates an intention to secure its removal.

Open Space

The provision of more open space may perhaps have been of particular concern to the planning authority and an examination of the plan may reveal that the site of an existing house or factory is zoned as public open space, in which case a number of factors arising out of the survey must be considered. The analysis should show whether the planning authority has approved a standard for public open space at which the plan should aim; secondly, the extent of the deficiency of open space in relation to the existing population and, finally, the amount of land required in order to achieve the target in view. Other factors which should be examined in the analysis and on the plan are (a) suitability of the

site for its use as open space, (b) the availability of alternative sites, (c) the cost to the ratepayer, (d) the situation of the site in relation to the residential areas, (e) the probable life of the existing building, and (f) the displacement of population involved. The proposals in the County of London Plan provide a good example of this problem in a densely developed urban area. In this case an interim standard of $2\frac{1}{2}$ acres per 1,000 of population has been adopted as a step towards an ultimate target of 4 acres per 1,000 of population. Large areas exist in London in which there is substantially less than this amount of open space available, but it is recognised that future acquisition is governed by land shortage, financial considerations and residential displacement. The town map, in this case, shows 1,450 acres of proposed new open space with a total displacement of 82,000 persons, of which 5,000 will be displaced in the first five years. It is felt in some quarters that such a programme is unduly optimistic and that such a target will not be achieved in view of competing claims for other types of development.

No attempt has been made to embark on an exhaustive analysis of the many problems which may be encountered as a result of the publication of a development plan, but I hope that these examples may be of use and serve as a guide to those who may suddenly be obliged to come fresh to the examination of such a plan.

Next month I shall examine the statutory parts of a plan in greater detail, together with further problems of general interest.

[*To be concluded*]

Land Unoccupied on the Appointed Day

By W. A. Leach, f.r.i.c.s.

Where land was unoccupied on July 1, 1948, the last use thereof may be resumed (s. 12 (5) (*c*)), but (i) a contravening use is to be ignored, *i.e.*, the last use means the last non-contravening use, and (ii) this provision does not apply where the land has not been occupied since January 7, 1937 (provisos (i) and (ii) to s. 12 (5)).

" Contravening " in this context means contravening planning control as existing before July 1, 1948, which is defined by s. 75 (9) as meaning a use which, when commenced, was not in conformity with a planning scheme and was not authorised by a consent under a scheme or under interim development control. If, when the use was commenced, the area in which the land is situated was not subject to planning control, *i.e.*, a resolution to prepare a planning scheme had not been passed by the local authority then responsible for planning, there was no contravention.

There was a provision in s. 53 of the 1932 Act that an " existing use " (as therein defined) lapsed as such if the use were discontinued for more than 18 months. The effect was that if the use were resumed, then when the scheme for the area was made (or earlier under the 1943 Act) the discontinuance of the use could be required without liability falling upon the authority for the payment of compensation. Non-occupation of the land would not of itself bring a use to an end, for a garage, a factory and a dwelling-house are still spoken of as such when empty, and it would be highly inconvenient if permission had to be obtained every time a property was reoccupied (and by implication every time it became empty !); nor did the statutory provision itself bring a use to an end, but only made it subject to determination without compensation. Apart, therefore, from this statutory power of determination, the right to resume the existing use actively at any time remained. Consequently, with the repeal of the statutory provision the right to continue the " existing use " stood unimpaired subject, of course, to the provisions of the new Act. Where the use had not been discontinued for more than

18 months there was never any question of the right to resume it, subject, since July 1, 1948, to the new provisions.

Similarly, before July 1, 1948, a temporary use lasting for not more than 18 months would not have given power to ban the resumption of the normal use without liability to compensation, and it is possible that when s. 12 (5) (*c*) refers to the last use one may ignore a temporary use (which, in view of the non-occupation, may have been abandoned) and return to the substantive use (or what s. 12 (5) (*a*) calls the " normal use "). Even if the temporary use had endured for more than 18 months, the repeal of the 1932 Act left it open (subject to the new provisions) for the substantive use to be resumed, so that here again the " last use " may mean the last substantive use. On the other hand, it is only a conforming use which may be resumed, and it may be that having arrived back at such a use one can go no further; that is what the Act literally says and the different terms used in paras. (*a*) and (*c*) of s. 12 (5) may be significant or unintentional. Nevertheless, the whole form of s. 12 (5) is that of a provision to preserve the right to established uses, and a substantive use is better established than a temporary one.

Section 12 (5) (*c*) requires for its application that there shall have been occupation since January 7, 1937. If there has been, then the last non-contravening use may be resumed, however long it may be since the last exercise of the use occurred, even if there is ground for saying that the use has been abandoned; and a temporary use met with in going back may possibly be ignored.

If there has been no occupation since January 7, 1937, then s. 12 (5) (*c*) does not authorise the resumption of the last use; at the same time it does not say that the actual last use or the substantive use shall be considered as ended, so that there is a right to resume it since, if it has not been abandoned, it still survives and its resumption would not represent a change of use. This seems to be the result of the words used although compared with the position as to rebuilding under para. 1 of the Third Schedule it was probably not intended. However, there it is, and the only exception would seem to be where the use has been abandoned, for to revive an abandoned use would be a change of use and the resumption of an abandoned use is not authorised where there has been no occupation between January 7, 1937, and July 1, 1948. This is in accord with a decision of the Minister ([1950] J.P.L. 843–4). It seems more certain under the present heading that

a temporary use could be ignored. Indeed, a temporary use which has been discontinued might well be regarded as ended, leaving only the substantive use.

The short result seems to be therefore as follows:—

1. Land occupied for any purpose or period between January 7, 1937, and July 1, 1948: right to resume last non-contravening use whenever last carried on. *Quaere*, can a temporary use be ignored and an earlier normal use considered to be the last use?
2. Land not occupied between January 7, 1937, and July 1, 1948: the last normal use may be resumed if not abandoned.

Sale of a Hospital by the Minister

By Ronald P. Crompton, m.a., l.a.m.t.p.i.,
Deputy Town Clerk of the Borough of Middleton

This rather unusual case may be of interest to readers. A private cottage hospital held on charitable trusts on the appointed day vested in the Minister of Health on July 5, 1948, the Appointed Day under the National Health Service Act, "free of any trust existing immediately before the Appointed Day." In 1951 the property was submitted to auction and the auction particulars bore the words "By order of the Ministry of Health." The Special Conditions of Sale stated, *inter alia*, as follows:—

> "6 (a) The title shall commence with an order of the Board of Charity Commissioners for England and Wales dated August 12, 1927.
>
> (b) Comprised in the title is an order of the Board of Charity Commissioners for England and Wales dated September 7, 1928, relating to the said property. A print of the order may be inspected at the offices of the vendors' solicitors, but this will be retained by them after completion has taken place."

The property was sold and the purchaser now desires to turn it into a country residence. The question thus arises whether a development charge is payable.

The matter is complicated by the dual character of the property, formerly land held on charitable trusts now Crown land. S. 85 (3) of the Act of 1947 does not apply so as to give exemption from development charge for a use corresponding with the use of contiguous or adjacent land because planning permission cannot be given before the land ceases to be land to which s. 85 applies. It has not been overlooked that by the coming into effect of the National Health Service Act a hospital does not cease to be a charity (*Re Dean's Will Trusts* [1950] 1 All E.R. 882, and *Re Frere, decd.* [1951] Ch. 27); but this does not avail a purchaser who cannot obtain planning permission while his chances are still dependent on the luck of the auction.

The procedure laid down for the disposal of Crown land in

Central Land Board Practice Note 34 [1] does not appear to have been adopted. It is stated specifically that the Crown's freedom from development charge does not in law pass to a private person who buys or leases Crown land. Two methods of sale are laid down similar to methods A and B in House 1, whereby the land is either sold at existing use value and the purchaser is subject to development charge, or at a price inclusive of charge when the Board issue a certificate that no charge is payable. In each case it is stated "Departments will make it clear to the purchaser or lessee which method they are adopting."

There is of course a general principle of law enunciated by Romer L.J. in *Wirral Estates Ltd.* v. *Shaw* [1932] 2 K.B. 247, at p. 263 that "it is the duty of the Courts so to construe the Acts that the Crown and its property are in no way prejudicially affected by them." The Crown would be affected if its sale value of property were reduced by the fact that the purchaser would have to pay a development charge to which the Crown was not itself subject and therefore the price would be reduced.

Whether the Central Land Board will levy a development charge on a change from a hospital to a residence is not in itself material. The important point is that the position of a purchaser from the Minister may be uncertain unless it is made certain by the terms of sale. An even more difficult position may arise if land is purchased from the Gas Board (nationalised May, 1949) as certain of this land may have been s. 82 land at the Appointed Day and by reason of its vesting in the Board, s. 82 (4) does not apply.

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[1] [1949] J.P.L. 252 ff.

Development in Barsetshire

Compulsory Purchase where Service Tenancy

The following conversation concerns a property which the owner had vacated with the intention of later developing. Pending the time when this was possible he had installed in the house a caretaker and family. The local authority sought to acquire the property with vacant possession, but the owner refused to eject the caretaker, who could not find other accommodation. The acquiring authority's valuer and the claimant's surveyor have previously agreed the compensation as with vacant possession.

S. I am hoping we may be able to agree this matter once and for all. Have you any bright ideas for a settlement?

V. Not particularly, but I have given the case some thought and I feel that if your client refuses to give the caretaker notice I cannot think of the acquisition in terms of vacant possession.

S. Why not? After all the caretaker can be ejected at will. My client has a legal right to possession but feels it is quite wrong for him to throw the man and his family on to the street.

V. Quite so, but put yourself in the place of a prospective purchaser. Would you be as willing to buy at the same price with a caretaker and family in possession as you would if the house were vacant? One can argue that the caretaker can be ejected at will, but in these days of housing shortage it is one thing to say you can get rid of an occupant at will but it is another thing to get him out if he refuses to go. Also there may be some flaw in your client's arrangements with the caretaker—many people before have in all innocence created what they fondly imagined to be service tenancies, only to find when challenged in court that they had a rent restricted tenant on their hands.

S. You terrify me.

V. I was hoping to; but seriously, would you in my position be prepared to advise your client that the house with and without the caretaker was in these days one and the same thing as regards its value for sale?

S. Truthfully I can only reply no, but how do you propose to deal with it—you surely aren't proposing to attempt to value on the basis of the hypothetical risk that the caretaker might prove awkward?

V. No, but I think it would be fair to make a deduction by way of a disability allowance to cover that risk.

S. How much?

V. In round figures I should think £300 would be reasonable.

S. Let me get this clear—you are deducting I take it on the grounds that there is no certainty of obtaining vacant possession?

V. Yes.

S. In other words you are trying to eliminate vacant possession value twice. Don't forget we have already eliminated it once under s. 52 in our previous negotiations.

V. Bless my soul, so we have, but do you know although I've discussed this case in detail with my Senior, neither of us realised that.

S. Well, don't worry—none of us is infallible.

V. (*gathering up his file*) Would you excuse me a moment?

V. (*returning after some minutes*) Well, I've just seen my Senior again and he agrees with what you say.

S. So the compensation figure remains as agreed previously.

V. Yes.

Progress of Development Plans

(*Continued from p. 96, ante*)

The following is a continuation of the list of plans submitted to date (February 19, 1952). Any objections should be sent to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before the closing date indicated.

42. Bootle County Borough Council.
Local inquiry : March 19, 1952.

62. Burton upon Trent County Borough Council.
Submitted to Minister: January 31, 1952.
(*London Gazette*, February 1, 1952.)
Closing date for objections: March 21, 1952.

63. Dudley County Borough Council.
Submitted to Minister : February 15, 1952.

64. Great Yarmouth County Borough Council.
Submitted to Minister : February 14, 1952.
Closing date for objections : April 10, 1952.

65. West Sussex County Council (Third and final part).
Submitted to Minister : February 15, 1952.

Scotland

(*Continued from* [1951] J.P.L. 710)

S. 1. Clydebank Town Council (Central Area Part Plan).
Approved (with modifications): January 19, 1952.

S. 5. Motherwell and Wishaw Town Council.
Submitted to Secretary of State: November 8, 1951.
(*Edinburgh Gazette*, November 23, 1951.)
Closing date for objections: January 5, 1952.

S. 6. Greenock Town Council.
Submitted to Secretary of State: December 26, 1951.
(*Edinburgh Gazette*, January 8, 1952.)
Closing date for objections: February 16, 1952.

S. 7. Glasgow Town Council.
Submitted to Secretary of State: December 31, 1951.
(*Edinburgh Gazette*, January 22, 1952.)
Closing date for objections : March 31, 1952.

Parliamentary Intelligence

Town Development Bill

This Bill received its first Reading in the House of Commons on January 31, 1952.

The main object of the Bill is to help local authorities to carry out, in rural or small urban areas, town development, *i.e.*, housing and any necessary industrial, commercial or other ancillary development, to provide accommodation for people from other areas who, because of overcrowding or shortage of land, cannot be housed or rehoused in those areas. To this end, the Bill provides for Exchequer assistance, where appropriate, towards the cost of town development, and for some extension and adaptation of existing powers to enable local authorities to carry out the development.

Town development is defined as development in a county district which will relieve congestion or over-population elsewhere, and provides for referring to the county district in which the development takes place as the receiving district (clause 1).

Under the terms of the Bill, the Minister of Housing and Local Government will be empowered to contribute to the cost of town development if he is satisfied that the development will be on a substantial scale and that it will relieve congestion or over-population in a county borough, in the County of London or in a county district outside the county in which the development is to be carried out (clause 2).

The expenses incurred in carrying out town development to which the Minister may contribute are—

(i) rate fund contributions in respect of provision of houses for which Exchequer subsidies are payable under the Housing, etc., Act, 1946;

(ii) acquisition of land;

(iii) site development;

(iv) provision of main water supplies or sewerage;

(v) payments to water undertakers for works for making supplies available. The Exchequer contribution will vary according to the relevant circumstances, including the burden on the authority and their ability to meet it. Other grants to local authorities, *e.g.*, the

Exchequer Equalisation grants, may be increased as a result of the Bill.

The Minister is empowered to make the payment of any contributions subject to conditions (clause 3), and if these are not observed to withhold or postpone payment of those or of any other contributions under the Bill and also of any relevant standard Exchequer contributions.

The councils of county boroughs and county districts which will benefit from town development under the Bill will be empowered to contribute to the expenses of the council of a receiving district (clause 4) and the council of a receiving district, with the approval of the Minister, to exercise their powers even though the development will be for the benefit not, as normally, of their own area but of the area or areas to be relieved (clause 5).

The local authorities will be given power to acquire for town development purposes under the Bill land which is not designated by a development plan as subject to compulsory acquisition (clause 6).

Certain defined authorities outside the receiving district may participate in town development, whether by undertaking part of the development or the whole of it or by contributing to the expenses of it (clause 7); and with the Minister's approval it will be possible for agreements to be made between participating authorities and the councils of receiving districts (clause 8).

The Bill provides that the Minister, on the application of the authorities concerned, may provide by order for the carrying out of sewerage works and for the exercise of sewerage powers under the Public Health Act, 1936, by a participating authority; and, where necessary, for the transfer to that authority of any existing sewers and sewage disposal works vested in the sewerage authority for the district (clause 8 (4)).

The Bill contains a number of financial and other provisions ancillary to the foregoing provisions.

It also provides for the repeal of subs. (5) of s. 19 of the Act of 1944 as enacted in Sched. 11 to the Act of 1947 (clause 17). This subsection at present provides that where land acquired under ss. 38 or 40 of the Act of 1947 is disposed of by the local authority, the consent of the Minister (which is required by subs. (4)) shall not be given to a sale of the freehold interest in the land or to a lease for a term of more than ninety-nine years, unless he is satisfied that there are exceptional circumstances which render such disposal expedient.

Licensed Premises in New Towns Bill

This Bill received its first Reading in the House of Commons on February 5, 1952.

The Bill proposes to repeal the provisions of the Licensing Act, 1949, which provide for State management of the liquor trade in the New Towns, and to establish committees for determining the number, nature, and distribution of licensed premises in such towns (s. 1). Each committee will consist of a chairman appointed by the Home Secretary and an even number of other members, half appointed by the development corporation for the New Town and half by and from among the licensing justices for the licensing district in question (s. 2).

Replies to Questions in the House of Commons

Development Charges

In a written reply to Mr. Cuthbert, who inquired as to the cancellation of development charge on small building plots, the Minister of Housing and Local Government (Mr. H. MacMillan) said he was unable to add to the reply given to Mr. Nicholls on December 7,[1] but there were many cases in which the charge need be no deterrent to the building of houses by private persons. (January 29, 1952. H.C. Debates, Vol. 495, col. *18*.)

Development Charges and Part VI Payments

In a written reply to Mr. Nield, Mr. MacMillan stated that the total amount received by the Central Land Board in respect of development charges from July 1, 1948, to December 31, 1951, was £8,615,000. In addition, £4,867,000 had been set off against claims on the £300 million. Until the s. 58 scheme was approved, it was not possible to say what amount was payable in respect of any particular claim or class of claims. (January 29, 1952, H.C. Debates, Vol. 495, col. *19*.)

Determination of Part VI Claims

In a written reply to Mr. York, the Financial Secretary to the Treasury (Mr. Boyd-Carpenter) said that up to December 28, 1951, the Central Land Board had issued 464,000 determinations under s. 58 of the Act, of which about 200,000 had no development value. 825 appeals had been received, of which all but 182 had been settled either by agreement or by the Lands Tribunal. (January 30, 1952. H.C. Debates, Vol. 495, col. *36*.)

[1] *Ante*, p. 41.

Ministerial Information and Circulars

Compulsory Purchase Procedure

The following circular (No. 7/52, dated January 25, 1952) has been addressed to local authorities by the Minister of Housing and Local Government.

I am directed by the Minister of Housing and Local Government to refer to circular 74/51 with which was enclosed the second report of the Local Government Manpower Committee, and to draw the attention of the Council to the recommendations contained in Appendix II to the report which relate to detailed procedure in connection with the submission and consideration of compulsory purchase orders. Effect will be given administratively by the Government Departments concerned to the recommendations which affect Government Departments.

I am to request that the council will take note of the points referred to in the report which concern their own procedure.

(1) *Advertisement of orders.* It is not necessary in advertising compulsory purchase orders to reproduce a lengthy schedule in the advertisement, so long as the description of the land is sufficient to enable interested persons to ascertain easily whether their land is included.

(2) *Orders requiring co-ordination.* When an order affects more than one local authority or two orders have a bearing on one another, the acquiring authorities should, first of all, try to resolve any conflicts of interest informally and, next, they should bring to the confirming authority's notice, at the time when they submit the order for confirmation, any need for co-ordination which has come to light. Orders which have a bearing on each other should if possible be submitted at the same time.

(3) *Objection on price only.* When the only obstacle to acquisition by agreement is inability to agree as to the price to be paid for the land and the making of a compulsory purchase order is not necessary to get rid of any restrictive covenants on the land, the local authorities should whenever possible make agreements under which the compensation is to

be referred to the Lands Tribunal as though a compulsory purchase order had been confirmed. Many local authorities are understood to have evolved forms of agreement on this basis and, if the authority so desire, the Ministry will supply them with a copy of a form for this purpose.

(4) *Procedure of confirmation.* The local authority when submitting the order for confirmation should submit two sealed and four unsealed copies of the order and two sealed and two unsealed copies of the map.[1] All Departments confirming orders will adopt these requirements. Orders will be confirmed by endorsement and any modifications will be made either by manuscript amendments to the order or by setting them out in the endorsement. No decision letter will, as a rule, precede the confirmation of an order. The local authority will then produce copies of the confirmed order for service and the number of copies required by the confirming Department for official use will be notified by the Department when issuing the confirmed order.

Compulsory Purchase of Land Regulations, 1949

I am also to refer to the above Regulations (S.I. No. 507 of 1949) and to say that an error occurs in the footnotes to Forms 2, 3, 7 and 8. In each case the words "21 days" should read "22 days." The notes are not part of the prescribed forms, but as the forms require objections to be made *before* the date stated, the extra day must be allowed in order to give the proper time for objections according to the Acquisition of Land (Authorisation Procedure) Act, 1946.

Report of the Committee on Local Land Charges

The following is a summary of the main recommendations of the Committee on Local Land Charges, which was appointed by the Lord Chancellor in March, 1949, and has issued a report [2] which was presented to Parliament in January, 1952. Two of the members of the Committee signed the report subject to certain reservations.

(1) The practice of making supplementary inquiries should continue on a voluntary basis.

(2) Additional matters should be the subject of supplementary inquiry.

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[1] A further sealed order and sealed map will be required for orders including expedited completion of purchase.

[2] Cmd. 8440, H.M.S.O. 2s. 6d. net.

(3) A number of additional matters should be made registrable as local land charges.

(4) Any legislation amending s. 15 (7) of the Land Charges Act, 1925, so as to make these additional matters registrable should so far as possible take the form of a general formula rather than an itemised schedule; but there should be power by order to make additions to and exceptions from the general formula for removing anomalies and obscurities.

(5) Outside London the county registers should be absorbed by the district registers; but in London the present system should continue.

(6) The same Government Department should be responsible both for making Local Land Charges Rules and for their administration, and the local registries should be visited regularly by inspectors appointed by this Department.

(7) The responsibility for keeping the register should be placed on the local authority and not its clerk.

(8) Failure to register a charge made registrable by s. 15 (7) of the Land Charges Act, 1925, or any similar charge should not result in the avoidance of the charge against a purchaser; but a purchaser who has suffered loss in consequence of the failure to disclose in a certificate of search a charge which has been, or should have been, registered should be entitled to be paid compensation. No authority, whether a Government Department or not, should be exempt from this liability. But provisions should be made for enabling any authority, with the approval of the appropriate tribunal, to cancel a charge and thus avoid payment of compensation.

(9) Before taking action to enforce a prohibition or restriction, an authority should be required by law to give the offender an opportunity to rectify his default.

(10) The provisions of s. 4 of the Law of Property (Amendment) Act, 1926 (priority notices), should not apply to charges registrable under s. 15 (7) of the Land Charges Act, 1925, or similar charges; nor should they be adapted to any amendment of the law made in pursuance of recommendation (8) above.

(11) No further obligations to disclose should be imposed on vendors; for the purpose of a purchaser's rights to disclosure by a vendor, all registrable matters should be put on the same footing, under whatever enactment they are required to be registered, and whether they are in fact registered or not.

(12) It is undesirable to increase the number of parts of the register, and the number of existing parts should, if possible, be reduced.

(13) The definition of " parcel of land " in Rule 2 (1) of the 1934 Rules, and the meaning of the expression " contiguous parcels of land " in Rule 15 (5) should be clarified.

(14) Where a charge imposed by one authority is to be registered by another authority, the procedure should be more precisely defined.

(15) The circumstances in which a charge becomes unenforceable for the purpose of Rule 13 of the 1934 Rules should be clarified and other amendments of that Rule should be made with a view to facilitating the cancellation of dead entries in the register.

(16) The Local Land Charges Rules are in urgent need of consolidation.

Lands Tribunal Decisions *

Compensation for Goodwill on Revocation of Planning Permission

Halford v. Oxfordshire County Council [1] (February 14, 1952). This was a claim for compensation under s. 22 of the Act of 1947, following the revocation of a planning permission for the establishment of a boat-building and boat-hiring business shortly after the permission had been granted and before the use had commenced. The council had agreed compensation in respect of depreciation in value of the land and for abortive expenditure.

The Tribunal (Sir Wm. Fitzgerald, K.C.) held that further claims in respect of the value of the business on October 1, 1949, and loss of profit up to that date, which were based on the value of the business as a going concern, *i.e.*, goodwill, could not be maintained under s. 22 (1). The questions whether any profits would be made and whether the business when eventually established would have any marketable value, were held to be too remote and problematical to be loss or damage directly attributable to the revocation.

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* Full reports of these cases will be published in *Planning and Compensation Reports.*

[1] Counsel: *C. Fletcher-Cooke*, instructed by Pryce, Carslow and Lillies, Abingdon; *J. Ramsay Willis*, instructed by the Clerk of the Oxfordshire County Council.

Compensation for Compulsory Purchase

Ainslie v. Secretary of State for War[2] (January 7, 1952). This was a claim for compensation in respect of the compulsory purchase of a house and land at Hampstead, comprising 0.398 acre, part of property of the claimant, which also included a bungalow and garages in an old stable yard. The house was a five-storey building containing in all 4 large reception rooms, oak-panelled vestibule, study, large billiards room, sitting room, 17 bedrooms, 2 separate bathrooms, 3 combined bathroom/w.c.s, 3 separate w.c.s, and boxroom. It had last been in full occupation in 1937, when there were three separate occupations, and had suffered war damage in 1940, 1943 and 1944, only the basement being occupied from 1944 to 1947. The claimant had purchased the whole property, including the bungalow and garage, for £22,000 in 1948. Notice to treat was served on February 22, 1949.

The claimant submitted a valuation of £19,800 (based on a net revenue from the restored property of £1,230 p.a. for three flats), plus injurious affection amounting to £3,750. The acquiring authority's valuation amounted to £11,528 (based on a net revenue of £947 p.a. for three flats, but on the assumption that a resident caretaker and porter would be necessary, especially to provide hot water and heating).

The Tribunal (Cecil H. Bailey, Esq., B.Sc., M.I.C.E., F.R.I.C.S.) held that the net revenue should be on the basis that services would be necessary to maintain the rents over a long period. But, using a lower rate of discount than that in the authority's valuation, the Tribunal decided that the capital value of the property acquired was £15,600.

The claim for injurious affection to the bungalow (£3,750) was based on depreciation from its value before injury (£8,500) due to the new boundary (£1,750) and loss of residential amenities owing to occupation of the house by the Territorial Army Association (£1,500) and necessity for re-laying the garden and providing new paths (£500). The Tribunal upheld a submission by counsel for the acquiring authority that in calculating the amount payable for injurious affection, effect must be given to the notional lease provisions of s. 52 of the Act of 1947. The acquiring authority had submitted a detailed valuation on this basis amounting to £2,176, which figure was amended by the Tribunal to £2,250, with an additional £150

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[2] Counsel: *D. Walker-Smith*, instructed by Messrs. Weatherfield, Baines & Baines, for the claimant; *B. S. Wingate Saul*, instructed by the Treasury Solicitor.

for a new entrance to the land, to total £2,400. On the claimant's method this was attributed by the Tribunal as to new boundary, £1,750; loss of amenities, £500; re-laying of garden, nil (said to be due to war damage); plus £150 for the new entrance.

The compensation was accordingly determined to be £15,600 plus £2,400, *viz.*, £18,000, with costs awarded to the claimant.

Kent's Personal Representatives v. Wimborne and Cranborne R.D.C.[3] (July 24, 1951; January 7, 1952). This was a claim for compensation for the compulsory purchase of a plot of agricultural land, 0.877 acre in area, at Sturminster Marshall, Dorset. Notices to treat were served on June 8, 1948.

The Tribunal (CECIL H. BAILEY, ESQ., B.SC., M.I.C.E., F.R.I.C.S.) had regard to the price paid by the respondent council in respect of an adjoining plot of land following a notice to treat in March, 1948. Allowing for the better accessibility of the present plot as accommodation land, the Tribunal accepted the district valuer's figure and awarded £200 as the compensation payable.

The claimant, who had not appeared either at the hearing or when the case came on originally, was ordered to pay costs of £65 to the acquiring authority.

Claims for Loss of Development Value

Prudential Assurance Co. Ltd. v. Central Land Board, No. 1[4] (January 30, 1952). This was an appeal against a determination by the Central Land Board that there was no development value in the claimant's premises in Kensington High Street, London, comprising 28 flats with 6 shops and a bank on the ground floor.

It was agreed between the parties that the restricted value of the property was £101,500 (approx. £38,600 attributable to the shops and £63,270 to the flats), and that conversion of the flats to offices was physically possible and could be carried out at a cost of £30,000 plus ten per cent. fees. The

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[3] Appearances: Mr. M. C. Green, of Messrs. Luff, Raymond & Williams, Wimborne Minster, for the acquiring authority.

[4] Counsel: *Michael Rowe, K.C., G. D. Squibb*, and *Christopher Hodson*, instructed by the Solicitor to the Prudential Assurance Co., for the appellants; *The Attorney-General (Sir Lionel Heald K.C.)*, and *Maurice Lyell*, instructed by the Treasury Solicitor, for the Central Land Board.

appellants claimed that the unrestricted value, based on the conversion of the flats to offices, was £337,250.

The Tribunal (ERSKINE SIMES, ESQ., K.C., and J. P. C. DONE, ESQ., F.R.I.C.S.) accepted the Central Land Board's submission that the principles of the *Bwlfa Case* [5] were not applicable and that the values must be assessed on market values at July 1, 1948, and without reference to knowledge which only became available at a later date. But the area was zoned for general business purposes so that planning permission for the conversion could have been obtained, and apart from one flat which was subject to the Rent Acts the other tenancies were due to expire on March 25, 1950. On the evidence as to demand for office accommodation the Tribunal held that the premises would have had a value in excess of restricted value, notwithstanding the restriction on conversion of living accommodation to other purposes imposed by Defence Reg. 68CA, which was due to expire on December 10, 1950. Allowing for the effect of that Regulation on market values, however, the Tribunal assessed the unrestricted value at £190,000, resulting in the development value being assessed at £88,500.

Appeal allowed with costs on the High Court scale.

Prudential Assurance Co., Ltd. v. Central Land Board, No. 27 [6] (January 30, 1952). This was a further appeal, similar to that noted immediately above, in respect of other premises at Kensington High Street, London, comprising 49 flats with 17 shops on the ground floor.

The restricted value was agreed at £276,500, and the cost of conversion at £67,000 plus ten per cent. fees. The appellants claimed that the unrestricted value, based on conversion of the flats to offices, was £556,000.

The Tribunal, acting on the same principles as in the previous case, assessed the unrestricted value at £350,000, resulting in development value of £73,500.

Appeal allowed with costs on the High Court scale.

Rowlinson v. Central Land Board (January 11, 1952).[7] This was an appeal against a determination by the Central

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[5] *Bwllfa and Merthyr Dare Steam Collieries* (1891) *Ltd.* v. *Pontypridd Waterworks Co.* [1903] A.C. 426.

[6] Counsel as in previous case.

[7] Appearances: Mr. C. Clark, Solicitor, for Bridge Sanderson & Co., Mr. M. Abrahams, Solicitor, for the Treasury Solicitor.

Land Board that the development value of the freehold interest in 1·75 acres of land at Branton, Yorkshire, is £170 (£270 – £100). The appellant agreed the restricted value at £100, but claimed the unrestricted value was £750.

The land was approached by an unadopted private road 300 ft. in length, and on being adopted by the local authority, there would be liability to road charges in respect of about 25 ft. frontage. Interim development permission for the erection of houses on land of which this land formed part had been given in April, 1937, and some land had been sold in 1937 and 1938 at prices of or about 1s. per yard, the claimant's valuer basing his valuation on 1s. 9d. per yard in 1947.

The Tribunal (JAMES L. MILNE, ESQ., F.R.I.C.S.) decided that in view of the difficulty of obtaining licences to build houses in the Doncaster Rural District in 1948, there would have been no ready sale of the land for building development, and accepted the Central Land Board's figure of £270 as the unrestricted value.

Appeal dismissed. Appellant to pay three guineas costs.

Phuler v. Central Land Board (January 21, 1952). This was an appeal against a determination by the Central Land Board that there was no development value in 11.38 acres of agricultural land fronting on the Great North Road at Middleton Tyas, Yorkshire.

The Tribunal (CECIL H. BAILEY, ESQ., B.SC., M.I.C.E., F.R.I.C.S.) held that there was no development value in the land. 1,000 square yards of land on the opposite side of the road had been sold for £110 in 1947 for a petrol filling station, and a further acre for £500 in the same year to secure the position of the petrol station, but the Tribunal held that the possibility of development for this purpose had been exhausted, that in view of the existence of a nearby hotel there was no prospect of development for that purpose, and that the prospect on the appointed day of developing the land by building houses or by any other development was too remote to add anything to the existing use value.

Appeal dismissed. Appellant to pay Central Land Board's costs.

*Notes of Planning Decisions**

Screen to Safeguard Against Ancient Lights

The following is an extract from the letter of the Minister of Housing and Local Government dated February 11, 1952, allowing an appeal against the refusal of the Dorking Urban District Council to permit the retention of a timber screen at the rear of the garden of a cottage at Betchworth. Permission was refused for the reason that the screen would interfere seriously with the amenities of adjoining property.

"It has been represented on behalf of the appellant that the council's refusal deprives him of the ability to protect his property against the eventual acquisition of ancient lights by the owner of adjoining property.

In the Minister's view it would be inappropriate to allow planning control to be used in such a manner as to deprive the appellant of such rights as he may have at law in a matter of this nature, unless some overriding planning objection was involved. He does not think that the effect of the screen on the amenities of the neighbourhood is such as to justify a refusal of permission for its retention, and since he is of the opinion that no other planning consideration is in issue, he has decided to allow the appeal."

[By courtesy of Messrs. Down, Scott & Down, Solicitors.]

Time Limit on Siting of Single Caravan

The Minister of Housing and Local Government has announced his decision in an appeal against a condition imposed by Orpington Urban District Council in granting permission for the stationing of a caravan on land at Cudham. The condition was that the use should cease on May 15, 1952.

The council allowed the use of the caravan for one year only because it was thought that its permanent occupation would form an undesirable type of development detrimental to the amenities of the locality. It was also thought that to

* The Managing Editor desires to express his thanks to those who have been kind enough to send to this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

allow single caravans in isolation might encourage a general influx of caravans into the area.

As the appellant wished to live in the caravan only until he could build a bungalow on the plot, planning permission for which had already been granted, the Minister considers that the time limit of one year is unnecessarily restrictive. He therefore allows the stationing of a caravan on the land for a period of three years.

[By courtesy of the Public Relations Officer, Kent County Council.]

Change of Use from Temporary Church Premises to Shop

The Minister of Housing and Local Government has allowed an appeal by the owner of shop premises at Station Parade, Oakwood, Middlesex, against the decision of the Southgate Borough Council that a change of use of premises from use for church purposes to use as a shop was development and not the resumption of the normal use of the premises under s. 12 (5) (*a*) of the Act of 1947.

The property was one of a parade of 21 shops built in 1934 under a planning consent given by the Southgate Borough Council. This shop, together with a few others in the parade, had never been let as such when war broke out in 1939, but those which had not been let had been completed except for the erection of shop fronts and the decoration and fitting of the interiors.

The local authorities of the Methodist Church approached the owner of this property with the request that they might use it temporarily for church purposes. The owner agreed verbally and no rent was charged until March, 1942, when a nominal payment of £50 per annum was made. This was increased in 1947 to £100 per annum. No conversion of the premises to a church occurred but a breeze block front with windows and double doors was erected and certain internal arrangements were made for the carrying on of meetings.

In 1951 the church authorities left the premises and it was then let as a shop. The local planning authority determined under s. 17 of the Act that this change of use constituted development, and that the change of use was not within s. 12 (5) (*a*) of the Act, as although the premises were on the Appointed Day being used temporarily as a church, they had never previously been used for any other purpose, and use as a shop was therefore not the resumption of the normal use of the land. They further pointed out that to use the premises

as a shop it was necessary (*inter alia*) to demolish the wall at the front of the church and replace it by a shop front.

The Minister allowed the appeal without holding a public local inquiry. In his decision he states that he is satisfied that a change of use of premises from use for church purposes to use as a shop is a material change of use, but he considers that as the premises under appeal were designed for use as a shop the use for that purpose as proposed in the application which led to the present appeal can be regarded as a resumption of the normal use within the meaning of s. 12 (5) (*a*) of the Act, and planning permission is not therefore required.

[By courtesy of Messrs. Rees-Reynolds & Hunt, Chartered Surveyors, W.C.1.]

Removal of Land from Waste Dump [1]

The following is an extract from the letter of the Minister of Housing and Local Government dated January 22, 1952, dismissing an appeal against the determination of the Flintshire County Council under s. 17 of the Act of 1947, that the removal of minerals from the site of the Herward Mine, at Milwr, Holywell, would constitute development.

" The material to be removed was deposited prior to 1918 during the excavation of the Herward Shaft and Drainage Tunnel.

In correspondence with the council and in letters addressed to the Minister in support of your appeal you cite the case of *Shingler* v. *Williams* (1933) 49 T.L.R. 221, and claim that the waste which it is proposed to remove is not land but material temporarily stored upon the land; that the major portion of the dump remains exposed, without grass or vegetation, and cannot be regarded in any way as forming part of the configuration of the land; and that removal has occurred in the past from time to time. You say that since the material is not ' in or under ' as opposed to ' on ' land, its removal cannot be regarded as a mining operation as defined in the Act and Regulations and refer to the case of *Scott* v. *Midland Ry.* (1897) 61 J.P. 358, on the question of minerals within the Quarries Act, 1894. You further point out that the operations do not involve a material change of use of the land.

The Minister considers that the first question to be decided is whether the dump can be regarded as part and parcel of the land or as material of the nature of chattels resting upon the

[1] Compare the case referred to at p. 58, *ante*.

land. This is a question to be decided on the circumstances of the case, and in this connection the site was visited by officers of the Ministry of Local Government and Planning. They found that the tip was sufficiently weathered and overgrown with vegetation to give it for the most part the appearance of a natural feature of the landscape. Some removal of the material had obviously taken place, but the evidence is that this removal has been spasmodic and has not taken place at all for over five years. Neither such removal as has taken place, nor the fact that where it has occurred the appearance of the dump has been affected, appear to the Minister to be sufficient of themselves to support the contention that the dump is of the nature of chattels stored on the land. It appears to the Minister that the material was deposited where it now lies solely to remove it from the immediate vicinity of the shaft of the tunnel through which it was extracted.

Having regard to these considerations the Minister has come to the conclusion that the material has never really ceased to be part of the land. Its removal in these circumstances would, in his view, be an operation which under s. 12 (2) of the Act would constitute development."

[By courtesy of the Clerk of the Flintshire County Council.]

Display of Advertisement Panels

The following is an extract from the letter of the Minister of Housing and Local Government dated January 4, 1952, allowing, subject to a time limit condition, an appeal against the refusal of Cambridge County Council to permit the display of a stand of public information panels measuring 8 feet $6\frac{3}{8}$ inches by $37\frac{3}{8}$ inches on land situate at High Street, Cottenham.

" The Minister observes that although the locality includes residential features, the proposed panels would be displayed on vacant land behind a brick wall adjacent to a shop fronting on to the main street of a village.

The Minister has, therefore, concluded that the display of panels of the nature proposed would not be prejudicial to the amenity of this locality.

The Minister accordingly allows the appeal, subject to the condition that the display of the stand shall be permitted for three years."

[By courtesy of the County Planning Officer, County of Cambridge.]

Display of Advertisement Panels

The following is an extract from the letter of the Minister of Housing and Local Government dated December 17, 1951, allowing, subject to a time limit, an appeal against the refusal of Cambridgeshire County Council to permit the display of three public information panels, each measuring 4 feet by 3 feet 2 inches on land situate at Walnut Tree Avenue, Cambridge.

" The Minister observes that the proposed panels would be displayed in a minor road, on the garden wall of premises fronting on to a busy main road. He further observes that although there are numerous residential features in the locality, the immediate vicinity of the proposed site is mainly commercial in character, and that the panels would face a large garage on the opposite side of the road.

The Minister's view is that the display of the three panels on the site proposed would not be prejudicial to amenity.

The Minister accordingly allows the appeal, subject to the condition that the display of the panels shall be permitted for three years."

[By courtesy of the County Planning Officer, County of Cambridge.]

Display of Advertisement Panels

The following is an extract from the letter of the Minister of Housing and Local Government dated December 17, 1951, dismissing an appeal against the refusal of Cambridge County Council to permit the display of an advertisement panel on land at George IV Street, Cambridge.

" The Minister observes that the proposed panel would be displayed on the flank wall of a shop, situated at the junction of two minor roads in a locality which, notwithstanding the presence of a few commercial features is mainly residential in character.

The Minister's view is that the proposed panel would be out of keeping with the general characteristics of the locality, and for that reason, would be prejudicial to amenity."

[By courtesy of the County Planning Officer, County of Cambridge.]

Correspondence

To the Managing Editor,
Journal of Planning Law.

Reflections on Development Plans

Sir,

Mr. W. A. Leach in his article "Reflections on Development Plans" [1] says on p. 16, para. C, that "There is no provision in the Act *or elsewhere* that in preparing a development plan the authority is to have any regard whatever to cost."

It is perfectly true that the Act makes no such provision but Mr. Leach might, I think, have drawn attention to Circular No. 97 issued by the Ministry of Town and Country Planning on October 30, 1950, which in paragraph 5 (v) states—

> "This passage (containing the Planning Authority's view of the main factors which determine the amount of development which can take place within the periods covered by the Programme Map) should refer in very broad terms to the amount of building labour *and/or the expected level at which capital expenditure will proceed . . .*"

This passage will be in the Written Statement itself but the circular provides that more detailed discussion on these matters should be left to the Written Analysis.

In addition, in para. 6 (x) it is stated that planning authorities are obliged to consider inter alia, what labour resources will be available and the footnote suggests that some authorities may find it convenient to reckon their resources and compile the schedule of works in terms of financial resources rather than in terms of man-power.

In this paragraph also it is provided that—

> "A schedule should be prepared of the major works to be undertaken . . . The works should be noted with an estimate of the total labour force in man years . . . and . . . estimated cost."

So far as the matters referred to in paragraph 6 (*x*) are concerned, it is true that these are to be dealt with in the Written Analysis, which the purist might complain is not strictly part of the development plan. To the extent that the Written Analysis does not need the approval of the Minister this may be so, but the development plan would be incomprehensible and, I would suggest, almost worthless without the Report of the Survey and the Analysis on the Report of the Survey which accompanies it.

Yours faithfully,

Colin Duncan.

County Hall,
Kingston-upon-Thames.

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[1] *Ante*, p. 13.

To the Managing Editor,
Journal of Planning Law.

Control of Advertisements

Sir,

You may consider that the difficulty of administering the Town and Country Planning (Control of Advertisements) Regulations, 1948, requires no emphasis, but the following case in which my Council was recently concerned as local planning authority may perhaps be of general interest.

An enamel sign advertising a daily newspaper was affixed to a wall bordering a trunk road in the approaches to a fairly large town and had been there for some 20 years, with the permission of the owner of the wall. My Council recently "challenged" this advertisement by serving on the Newspaper a notice under reg. 8, requiring the submission of an application for express consent to display it. The application was duly made and consent was refused. As some five weeks later the sign was still there, an enforcement notice under reg. 23 was served on the Newspaper and also on the owner of the wall whose identity had been disclosed in the application form. The Newspaper immediately caused the sign to be removed but the owner of the wall, being aggrieved by the notice, appealed to a court of summary jurisdiction. The court held that the sign was being displayed with deemed consent under reg. 7 (1) and that as the expression "any person displaying an advertisement" used in reg. 8 (1) to describe the person or persons upon whom a "challenge notice" might be served was deemed by reg. 2 (2) to include the owner as well as the occupier of the site of an advertisement, the "challenge notice" ought to have been served on the appellant as well as upon the Newspaper. They accordingly allowed the appeal on the ground that the sign was being displayed with consent and quashed the enforcement notice.

In my view this is a correct decision although it would not seem to benefit the appellant materially since if the Newspaper were to restore the sign to position, the Council could presumably rely upon the enforcement notice served upon them and which has become effective, and remove it immediately. There are other more serious implications, however, because by reg. 2 (2) "a person displaying an advertisement" means not only the owner and occupier of the site but also any person whose goods are advertised. In the case of a hoarding belonging to an advertising company, but which is erected on somebody else's land and which advertises, say, a dozen different products, it seems that 14 challenge notices would have to be issued and possibly 14 applications dealt with.

Yours faithfully,

E. T. Verger,
Clerk of the County Council,
County of Cornwall.

County Hall,
Truro.

Practical Points

All questions for consideration should be addressed to "The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of replies.

352. *Development—caravan within the curtilage of a dwelling-house.*

Many conflicting points of view have been given with regard to the need to seek planning permission when a caravan is parked in the garden of a dwelling-house. There seems to be little doubt that the mere parking of a caravan does not constitute development under the Town and Country Planning Act, 1947, but there is doubt as to whether the use of the caravan for residential purposes becomes development.

The decisions issued by the Minister are not always clearly understood, mainly because of the lack of knowledge concerning the circumstances of each particular case, but it would be appreciated if you could give me your views on the following:—

(a) Does the parking of a caravan within the curtilage of a private dwelling-house constitute development?

(b) Does the parking and use of a caravan by members of the family constitute development?

(c) Does the parking and use of the caravan for residential purposes by a person not connected with the family constitute development?

My questions concern a straightforward modern caravan on wheels with no extensions built on. [H. C. C.]

Answer

(a) No—this is not a material change of use and is ancillary to the use of the dwelling-house: see, *e.g.*, Bulletin of Selected Appeal Decisions, No. IX/18.[1]

(b) I think the use of the caravan by a member or members of the family, living at the house, in such circumstances

[1] Noted [1951] J.P.L. 235.

that the caravan is virtually an additional room to the house, might be held not to be development, but I prefer the view that it *is* development; if the caravan is used as a separate dwelling unit, whether or not the two families are related, there is, in my opinion, quite clearly development. See the Minister's decision noted at [1950] J.P.L. 700.

(c) This is development (see (b), above). [J. F. G.]

353. *Development charge—conversion to price-controlled flats*

Clients of mine acquired premises for which they obtained planning permission to convert into flats which has entailed a change of user and the liability for the payment of development charge. The grant of the building licence is subject to the imposition of a controlled selling price and rents.

The District Valuer has agreed with me that if the controlled selling price is taken as the consent value the charge will be nil. He states, however, that he is not bound to take notice of this figure and has made his own valuation resulting in a development charge of £800. Even when this charge is added to the controlled selling price the District Valuer's consent value is substantially higher than the revised controlled selling price.

Apart from the fact that I do not agree with the District Valuer's valuation I am contending that para. 48 of Part II of the Central Land Board's Practice Notes (First Series) requires him to take notice of the controlled selling price. The fourth sentence reads: "Real also are planning decisions or development plans . . . by-laws and *other statutory restrictions*. . . ."

The matter has now been referred to the Central Land Board who, while admitting a controlled selling price is a statutory restriction, maintain that the District Valuer need not take notice of the controlled selling price as it is not arrived at "by the normal processes of valuation."

I have ascertained the method adopted locally for assessing controlled selling prices which, in my opinion, is as much a normal process as any other used by valuers.

The point is, I think, of importance as I have no appeal on the amount—the District Valuer is adhering to his figure—but can do so on the ground that it does not comply with the statutory requirements of s. 70 of the 1947 Act.

[G. W. & H.]

ANSWER

It is well known in rating that, in ascertaining the value at which premises are worth to be let, the standard rent under the Rent Acts is not conclusive (*Poplar* v. *Roberts* [1922] 2 A.C. 93). No doubt the same reasoning is applicable to the assessment of development charges so far as s. 70 is concerned. However, reading paras. 1 and 3 of the Regulations together, regard must be had to the fixed selling price since "land" will not be freely bought and sold if that price is disregarded in determining the development charge. (In determining market value for purposes of compulsory acquisition the fixed selling price would of course be material.) [W. A. L.]

354. *Tree preservation order—position where advances have been made*

S. 28 (2) of the Town and Country Planning Act, 1947, provides that a tree preservation order shall not be made in relation to any land in respect of which (*inter alia*) advances "have been made" under the Forestry Acts, 1919–47. In the case of a particular piece of land the last advance under these Acts has been received some considerable time ago and the local planning authority now desire to secure the preservation of the trees. The Conservator of Forests states that the Forestry Commission now has no control over the area, such control having ceased when the final grant was paid, although, presumably, the powers of the Commission under the Forestry Act, 1951, obtain. Your opinion is sought as to whether s. 28 (2) does, in fact, operate to prevent the making of a tree preservation order in this case and, if so, whether there are any other means of securing the desired object.

[E. T. V.]

ANSWER

I think that s. 28 (2) is quite clear, and that a tree preservation order could not be made in this case. Subject to the exceptions of s. 2, under the Forestry Act, 1951, trees cannot now be felled without the licence of the Forestry Commissioners—and under s. 3 (2) one of the grounds on which the Commissioners may refuse to grant a licence is "in the interests . . . of the amenities of the district." If felling is anticipated, therefore, it may be desirable for the local planning authority to contact the Commissioners on the matter.

[J. F. G.]

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"Planning Law" Notes

In a Parliamentary reply the Chancellor of the Exchequer has announced that claims on the £300 million fund under Part VI of the Act of 1947 will probably total about £345 to £350 million. The preferential near ripe claims would probably not absorb more than about £100 million, leaving about £200 million available for the remaining claims of £245 to £250 million.

This announcement will cause considerable surprise among property owners and others, for it has been a widely held view that the £300 million would prove to be insufficient to pay more than a small percentage of the full development value of the interests in respect of which claims have been made, and also that the preferential claims would absorb a large part of the £300 million.

As the last date for the making of the payments (July 1, 1953) draws nearer, this indication that the non-preferential claims may be paid to the extent of at least 80 per cent. of the development value may cause the Government's announcement that they are considering altering or modifying Parts V, VI and VII of the Act of 1947 to be regarded with mixed feelings. A further parliamentary statement, however, has indicated that amending legislation will not be introduced in this Session of Parliament (see *post*, p. 224).

In two recent cases (noted at pp. 230–231, *post*) the question has been raised whether an enforcement notice which does not specify a period after which it is to take effect in addition to any period within which the steps specified in the notice are required to be taken, is valid. In the first case the Court of Appeal has decided that the two periods are quite distinct, and the notice will be invalid if the period after which the notice is to take effect is not separately stated. In the second case, on an appeal against a conviction and fine under s. 24 of the Act of 1947, it was held at South London Sessions that notwithstanding the Court of Appeal decision a person had been properly convicted of failure to comply with an

enforcement notice which had not separately stated a period after which it was to take effect.

The question is, of course, especially important in the case of enforcement notices served before July 1, 1948, under s. 75 of the 1947 Act, in respect of "existing contravening development." If such a notice is invalid, no further notice may now be served by virtue of the proviso to s. 75 (1).

The House of Lords has dismissed the appeal in the *Fitzwilliam Case* (*post*, p. 229), and the power of the Central Land Board compulsorily to purchase land under s. 43 of the Act in order to further their policy of requiring sales to be at "existing use value" has thus been confirmed.

It remains to be seen whether the Board, armed with this decision, will now proceed to use their powers on a larger scale than hitherto.

A New Towns Bill has been introduced in the House of Commons, and proposes to increase the aggregate amount of advances which may be made to the Development Corporations from £50 million to £100 million.

The chairman of the National Parks Commission (Sir Patrick Duff) has signed the North York Moors National Park (Designation) Order. This is the sixth National Park to be designated. The Order will be submitted in due course to the Minister of Housing and Local Government for confirmation.

The area, the boundary of which is substantially the same as that proposed in 1947 in the Hobhouse Report, comprises approximately 600 square miles, all in the North Riding of Yorkshire.

The order designating the Pembrokeshire Coast National Park has been confirmed by the Minister of Housing and Local Government, without modifications.

The wide jurisdiction which the Lands Tribunal in appeals concerned with questions of valuation, has been further extended by the transfer to it of the jurisdiction of the special tribunal under Sched. IV to the Act of 1944, as incorporated with the Act of 1947, in respect of certain compensation payable to statutory undertakers.

The tribunal which is now superseded has, in fact, never been established.

The appointments of the members of Crawley new town development corporation, whose terms of office expired on February 26, have been renewed by the Minister of Housing and Local Government, with the exception of Lieut.-General Sir Charles King, who has resigned on his appointment as deputy chairman of Stevenage new town development corporation, and Mr. Alexander Hyman. The Minister is filling only one of the vacancies by the appointment of Sir Edward Gillett, a past president of the Royal Institution of Chartered Surveyors.

In a case in the Chancery Division of the High Court it has been held that where a compulsory purchase order is made and notice to treat served in respect of land which is subject to a contract of sale, the sale not having been completed, the effect of the order and notice is not to frustrate the contract, and specific performance may be obtained. The loss will accordingly fall on the purchaser. (See *post*, p. 233.)

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the MANAGING EDITOR, *Journal of Planning Law*, 3 CHANCERY LANE, LONDON, W.C.2. *Every attempt will be made to return drafts or unsuitable copy but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

The £300 Million Fund

By Harold J. J. Brown, Barrister-at-Law

The Part VI payments

The Government have now announced that the total of claims on the £300 million fund will be in the neighbourhood of £350 million, of which about £100 million will be near-ripe claims. This means that if the £300 million is shared out amongst the claimants, the near-ripe owners will be paid 100 per cent. of the 1948 development value of their land, and the remainder of the claimants approximately 80 per cent. of such value. The total of the claims is much less than had been generally anticipated, and the fund could well be increased by another £50 million to allow all of the claims to be settled at 100 per cent. of the 1948 development value.

But the Government is known to be considering the modification or alteration of Parts V, VI and VII of the Act, and although amending legislation is not to be expected in this Session of Parliament (see p. 224, *post*) it was made clear by the Conservative Party in their General Election statement a few months ago that if returned to power they contemplated making fundamental changes in these provisions.

If the scheme of the Act as it now stands is carried into effect, stock to the value of £300 million will be distributed next year by the Government in respect of the depreciation in value of interests in land caused by the liability to development charge imposed by the Act of 1947. There can be no doubt that in present economic circumstances, the inflationary effect of such payments will be a serious matter for the country, and it is reasonable to assume that the Government will be extremely reluctant to allow the payments to be issued. In any case, the great bulk of the payments will be in respect of development value which, had the Act not been passed, would in present circumstances not have been realised by development of the land for many years, and although the payments fall due in 1953, nothing will be recouped in the form of development charge from most of the development, except over a period of years extending into the distant future. Although the amount of the payments will have been discounted having regard to this circumstance, it emphasises that

a logical scheme would not provide for the payments to be made all together in 1953.

Scheme of deferred Part VI payments

In view of the foregoing considerations and the fact that the end of the five-year period within which the s. 58 scheme is to be made and the payments issued is now less than 15 months away, it is pertinent to reconsider one of the main proposals which was put forward in 1950 by the Royal Institution of Chartered Surveyors,[1] for now that the approximate total of claims on the £300 million is known, one of the great uncertainties which has hitherto hampered a clear consideration of the position has been removed.

The essentials of the Chartered Surveyors' proposal are that the 1948 development value should be assessed in all cases where claims have been duly made, with a right of appeal which would now be to the Lands Tribunal, and that certificates should be issued to the claimants, stating these amounts, as finally settled. No stock would automatically be issued, or other payment made in respect of the development value, but payments would be made on occasions such as the following (but no payments being made before 1953) :

(1) On the development in respect of which a certificate had been given being carried out, the certified amount of the 1948 development value would be brought into account with the development charge, and set off *pro tanto*.

(2) On compulsory purchase of the land, the certificate as well as the land would be acquired by the acquiring authority. Alternatively on such event the certified amount could be made payable to the landowner.

(3) On refusal of planning permission, the certified amount would be paid in cash, provided that the development would immediately have been carried out if planning permission had been granted.

The proposal was developed in rather more detail by the Chartered Surveyors. They concluded that the certified amount should appreciate at a specified rate from the appointed day until the date when the sum became payable. The amount could also be made payable on designation of land by a development plan.

In connection with refusals of planning permission it would be necessary to have a tribunal of some description to determine whether immediate development would be possible and

[1] Printed in full at [1950] J.P.L. 528, 619, 715. See especially pp. 636–8.

would in fact take place if planning permission were granted. This could be a function of the Minister, or a special tribunal could be constituted for the purpose.

A comment on this proposal was subsequently made in this Journal [2] to the effect that it might prove impracticable because of the degree of hostility it would be likely to arouse amongst landowners, and it was suggested that it might give rise to a new sport of devising an application for planning permission which would be refused and thereby result in the development value payment becoming immediately payable. But difficulties such as these should not be insuperable. Indeed, the landowners would be losing nothing except any development value which had accrued since 1948, whilst from the Government's point of view any unpopularity they might incur with the landowners must be regarded in the light of the measures that will otherwise have to be taken to counteract the inflationary effect of suddenly releasing £300 million some time in the first half of next year. As for the possibility of landowners devising applications which are not genuine merely with a view to securing the payment, the Minister or a competent independent tribunal should be an adequate safeguard against abuse of this provision.

The near-ripe minerals scheme

It is interesting that something very similar to such a scheme has now been adopted and worked out in detail in relation to those minerals which fall within the near-ripe category. The Minerals Development Charge Set-Off Regulations, 1951,[3] provide for Part VI payments in respect of near-ripe minerals being withheld except in cases corresponding to those mentioned above. Thus, on planning permission being granted for the development, the payment is set off against the development charge and on compulsory purchase or on refusal of planning permission the payment is (after July 1, 1953) to be issued.

In this case the development charge will be limited to the amount of the Part VI payment, so that no development charge will be payable above the 1948 development value. There are certain other interesting provisions, for instance, that in 1973 any Part VI payments which have not been set off or issued shall then be paid out. The difficulty in relation to

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[2] By T. A. Blanco White at [1950] J.P.L. 683.
[3] Summarised *ante*, p. 31.

a provision that payments shall be made if planning permission is refused—that it might give rise to applications being made for permission for development which there was no intention to carry out and of such a kind that planning permission would not be granted, merely in order to obtain the Part VI payment—does not arise in relation to development of near-ripe minerals since the development in question can only be the working of the minerals.

Provisions corresponding to other provisions incidental to the near-ripe minerals scheme might well be appropriate to a general scheme of deferred Part VI payments, although on principle there would seem to be no reason for including a provision (corresponding to reg. 12 of the Minerals Scheme) that if the Central Land Board are satisfied that there is no intention to carry out the development within the next 20 years the payment should be issued as if planning permission had been refused.

The incentive to develop

Under such a scheme of deferred payments, development charge would be payable in respect of development value in excess of the amount of 1948 development value plus the appropriate appreciation in that amount. This would be in accordance with the general intention to nationalise all development value but to pay compensation—the term has been officially rejected but nevertheless is appropriate—for the development value which existed on the appointed day when the Act came into force.

But to what extent would such a scheme solve the problem of providing an incentive for owners to develop their land or sell it for development ? If no such scheme is adopted and the £300 million fund is paid out, then so long as 100 per cent. development charge continues to be levied, the position will remain that the landowner has nothing to gain by changing the use of his land or by selling it to someone else for development.

If a scheme of deferred Part VI payments were adopted the landowner, to the extent that he had a certificate of 1948 development value, would have an incentive to develop, or to sell for development, in order to realise such development value. The 1948 development value would in time, however, gradually be worked out, and with a 100 per cent. development charge on development where the development value had accrued since 1948, the general lack of incentive to develop

would slowly return. As a long-term measure something further will be necessary, and there may be room for experiment. It may be that a general reduction to development charges at, say, 75 per cent. or 80 per cent. of development value would be sufficient, or it may be that some more flexible system could be evolved whereby development charges at different rates could be levied, in order to encourage certain kinds of development and discourage others.

The disadvantage of any differential system is the administrative one of applying it in practice. It may in theory be very desirable to differentiate in the matter of percentage development charge, between good development and bad, and between development where the development value results from works of a public nature and development where development value results from a change in public taste or some other cause. But development varies so greatly in kind and circumstances that it may well be impossible to evolve a workable differential system, however desirable it may be in theory. Who is to decide, in relation to any particular development, what shade of good or bad development it imports? What tribunal will assess the proportion of development value due to public works and that due to other causes? And what of the uncertainty as to land values, and the stimulus to corruption in official circles, that any such a system would result in?

In conclusion

It may be that the ultimate system of control of development and realisation of development value will only be achieved after a series of experiments of which the existing system is one stage, but it is submitted that now is the time to attempt a new solution which will provide a workable system without throwing overboard the principles on which the Act of 1947 was founded. A system of deferred compensation for 1948 development value, together with development charge on development value accruing since 1948 at a uniform 75 per cent., seems to provide that solution.

Designation or Allocation of Land by a Development Plan

A Reply to the Article by DESMOND HEAP.[1]

By a Town Clerk

1. I have read with considerable interest the contribution of Mr. Desmond Heap LL.M., L.M.T.P.I., in your issue of November last. Mr. Heap takes the view that where it appears from a development plan that land has been allocated for a purpose which is inconsistent with its use for private development "then there does not arise the same sterilising effect as would have been produced had the land been designated as subject to compulsory acquisition for a specific purpose."

2. Whilst agreeing with Mr. Heap that designation is a serious step, I do not agree that allocation is not. Indeed, I take the view that the allocation of land in a development plan for purposes which are not usual to private enterprise may not only be as serious to the owner as designation of the land for compulsory acquisition, but can, in addition, cause him hardship and embarrassment not associated with designation.

3. In the case of designation, which the landowner desires to resist, it is quite clear where he stands. He may be assured that the planning authority have not acted lightly and hope to satisfy the Minister (perhaps by detailed and technical evidence) that they will, in fact, be likely to acquire within 10 years (seven years in the case of agricultural land) from the date of approval of the plan. Here then is something of a positive nature. The owner may lodge an objection; challenge the proposal at the inquiry and seek to satisfy the Minister that the designation should not be confirmed. The owner knows that if his objection is overruled he will have no opportunity of objecting at any later stage on hardship grounds or on the ground of lack of need on the part of the local authority to acquire (s. 45 (1)).

4. In the event of the designation being approved, he also has a pretty shrewd idea as to where he stands. It is true that

[1] [1951] J.P.L. 629.

the planning authority may later seek to amend the plan by withdrawing the designation (s. 6), but it is not unreasonable to assume that such amendments will be infrequent. That being so, the owner may be encouraged to negotiate for alternative premises or to arrange (possibly in consultation with the planning authority) for the erection of new premises. He has, moreover, some prospect of coming to a financial arrangement with the authority for the sale to them of his premises and to transfer them to the authority on a date to be agreed.

5. He has a further advantage in relation to the owner of allocated premises in that if the planning authority do not purchase within 12 years he can call upon them (s. 9) to decide one way or the other.

6. What, however, is the position of the owner of allocated premises? Should he :—

(a) do nothing;

(b) lodge a formal objection in writing and leave it at that;

(c) do as (b) above and make a formal appearance at the inquiry to have his objection put on the record hoping that that fact will serve his cause later on; or

(d) do as he would have done if designation and not allocation applied to his property?

7. In many urban areas redevelopment schemes are necessary and have often been worked out in some detail on paper. How often indeed have these schemes been pigeonholed since the outbreak of the last war. Their implementation, however, is often very costly involving, as it usually does, the acquisition and demolition of premises. The period which a development plan is intended to cover is 20 years. But it follows that by reason of the present day Government restrictions on capital expenditure and the general need for financial economy that many of the premises which a local planning authority would desire to acquire in order to carry out a scheme of redevelopment cannot be acquired in the foreseeable future. They must therefore employ designation quite sparingly and, it would seem, rely for the time being at least on allocation of those premises which, but for such restrictions, they would designate. In this respect it is not unimportant to bear in mind that in many instances the only powers of local authorities to acquire are contained in the town planning Acts themselves, and if this is so allocation may be regarded as the first step towards the ultimate exercise of such powers. The allocation may, however, continue for

20 years, with no right meanwhile on the part of the owner to call upon the planning authority to withdraw it or acquire the premises except in the events provided for in s. 19 of the Act.

8. If the only powers of the authority to acquire are those contained in the town planning Acts themselves, they must at a later date designate and seek the approval of the Minister thereto. Such approval may, or may not, be forthcoming. Moreover, in such circumstances, the authority can only designate when they feel they can acquire within the 10 or seven year period and this in turn depends upon the economic position of the country.

9. In my view, the following principal effects of designation can apply with equal force to allocation, namely :—

(a) dissuade a prospective buyer of the property from pursuing the matter of purchase any further;
(b) dispose the planning authority to reject plans for extensions, etc. (s. 14 (1));
(c) introduce nervousness on the part of the owner, or those conducting the business, in expending money on approved extensions, etc.

10. I therefore contend that in many cases the allocation of land in a development plan can be just as sterilising in its effects as a designation order, and that therefore a landowner who is averse to parting with possession and ownership of his allocated property must consider whether he should not act as if it had been designated. At the same time, I would express the view that whilst development plans are desirable and probably necessary in our increasingly complex life, it is most important that they be regarded only (and this applies equally to those responsible for their preparation as to the individual members of the community affected by them) as positive instruments intended for the common good. A plan prepared or used unskilfully will be burdensome and whilst the powers of designation and allocation of land may be necessary tools for the improvement of our physical environment they should only be used if the development to which they refer is reasonably practicable. The Minister must be satisfied about the practicability of designation, but he does not seem to have the same legal obligation to satisfy himself about the practicability of allocation of land and, therefore, I suggest that planning authorities (and the Minister also) should take great care to see that allocation can, in fact, lead to their suggested development within a reasonable time.

Part V of the 1947 Act: Application to Injurious Affection

By W. A. Leach, F.R.I.C.S.

"Land" as such is never acquired since in this country it is owned as land only by the Crown. What is acquired is always an interest in land: also by s. 119 (1) "land" includes an "interest in land," so that the expression "compulsory acquisition of land" in s. 119 (4) includes the compulsory acquisition of an interest in land, and as land as such cannot be acquired, it includes *only* the compulsory acquisition of an interest in land.

It follows from s. 119 (4) that, *so far as the context allows*, all the rules of the 1947 Act apply to injurious affection, severance and disturbance arising out of the acquisition of an interest in land, but not to injurious affection and severance where no land is acquired.

In this connection it is to be noted that there are references in Part V of the Act to the "compulsory acquisition of an interest in land" and "compulsory acquisition of land" (which would seem to have the same meaning) and to the "value of that interest." It is here necessary to remember that the claim in respect of the value of the interest in land being acquired (including disturbance) and that for the injurious affection by severance or otherwise of other land of the claimant are two separate claims (*Horn* v. *Sunderland Corporation* [1941] 2 K.B. 26). The first claim alone gives the purchase-money for the interest for purposes of stamping the conveyance. Any reference to the "value of that interest" would seem to refer to the value of the land comprised in the notice to treat, *i.e.*, to the first claim and not to the second claim for injurious affection.

It would follow from this, if it be a correct reading, that so far as concerns injurious affection the valuation would have to be made on the basis of market value as affected by the practical operation of the 1947 Act, including the chances of securing permission for any prospective development and the liability to development charge, but not as subject to the rules of Part V so far as these rules relate specifically to the

value of an interest in land. That would exclude the whole of Part V.

It is only by reading "value of that interest" (contrary to established principle) as embracing the whole claim for compulsory acquisition that injurious affection can be subjected to the rules of these sections. I am more doubtful of this than when I wrote earlier: [1951] J.P.L. 88. This may have been the intention of s. 119 (4), but if so it is ill-expressed: also, if so, it would be necessary to consider whether the context of ss. 51–54 in some cases excludes the valuation of injurious affection. For example, proviso (*a*) to s. 51 (2) requires a certain assumption to be made as regards Part II of Sched. III in respect of the "land," which would seem to mean the land being acquired, *i.e.*, comprised in the notice to treat. Therefore the valuation of injurious affection would seem to rest solely on the main part of s. 51 (2) and not on proviso (*a*), so that for this purpose it must be assumed that permission would be granted for any development within Sched. III (Parts I and II) subject to development charge where appropriate (see s. 69 (3)). Para. (*b*) of section 51 (2) would seem to apply to the land being acquired and the land injuriously affected by severance or otherwise.

Section 51 (3) would on this reading probably have to be applied to the land comprised in the notice to treat and to land injuriously affected by severance or otherwise.

As regards the effect of the notional lease, s. 54 would seem to apply only to the land subject to the notice to treat, but regard would probably have to be had to this lease of the land being acquired in estimating the amount of injurious affection to other land (but not so for disturbance: s. 52 (6)).

The Lands Tribunal took the view in *Ainslie* v. *Secretary of State for War*[1] that this was the proper construction.

The land injuriously affected would not itself seem to be subjected to a notional lease.

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[1] *Ante*, p. 159.

The Examination of a Development Plan

By Patrick Stirling, Barrister-at-Law

(*Continued from p.* 143, *ante*)

Last month we discussed the way in which local planning authorities set about collecting the material on which to make a reliable analysis of the area at the present time. It is on the information so collected, and after consultation with interested bodies, that the planning authority will base the plan to be submitted to the Minister. The next stage in the examination of a development plan brings us to the maps and written matter which the authority are required by statute to present: we can then consider some further general problems which may arise subsequent to the publication of the plan. It is frequently emphasised in Ministerial circulars and by planning authorities that these plans will indicate the broad framework of future policy and will not settle the exact lines of future development in the manner of the planning schemes prepared under the Town and Country Planning Act, 1932. A word of caution, however, is needed: while it is true that the plans will define policy in broad terms, they will also contain a number of concrete proposals which must not be ignored. These plans will, in fact, determine, to a very considerable extent, the use to which land in the area may in the future be put. Many local and public bodies are given the opportunity of putting forward their requirements for land within certain periods, and the planning authority will both reconcile these competing demands and include in the plan specific and clear-cut proposals for development by public bodies. Another point which must be borne in mind is that the Minister has advised that planning authorities should limit themselves to reasonably firm proposals and not include them unless they see a likelihood of their being carried out within twenty years: this should not, however, exclude proposals which are of such significance that land ought to be reserved for them even if they cannot be carried out within the twenty year period. It is against these general considerations that the detailed proposals should be examined.

It may be convenient, at this stage, to set out the more important statutory instruments and circulars for the use of those who are obliged to examine a plan in detail: they are the Town and Country Planning (Development Plan) Regulations, 1948,[1] and Circulars 40, 59, 63, 70 and 92 issued by the Ministry of Housing and Local Government.[2]

Statutory Requirements

The Regulations distinguish between the essential basic maps which are a necessary part of a development plan and other " optional " maps, which need not be included unless the authority so chooses or the Minister so directs. In the case of county boroughs and the London County Council, the basic map will be the town map, to a scale of six inches to a mile, and this must be accompanied by a programme map and a written statement. The basic maps should show, where appropriate:—

(i) the location of areas comprised in comprehensive development area maps and designation maps;
(ii) use zones;
(iii) roads and parking places;
(iv) railway and water transport;
(v) schools and playing fields;
(vi) open spaces.

If locations under heading (i) above are shown, it will mean that the development plan also contains other larger scale maps which must be consulted.

In the case of a county council, the authority must submit a " basic " map in the form of a county map, drawn one inch to one mile, together with town maps for areas such as the principal towns in a county, areas where substantial development is expected, and some county areas on the fringe of county boroughs in those cases which seem most appropriate to the planning authority. These maps must also be accompanied by programme maps and a written statement.

The other components of a development plan which may be submitted if the authority so chooses, include comprehensive development area maps, designation maps for land designated as subject to compulsory purchase, and street

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[1] S.I. 1948, No. 1767.
[2] See the *Encyclopædia of Planning, Compulsory Purchase and Compensation*, Vol. 1, Part IV, at pp. 1218, 1268, 1359, 1381, 1474.

authorisation maps. The procedure in respect of these additional matters is dealt with in Circular 59,[3] to which reference can be made for further information. The function of the written statement is to elucidate the proposals in the maps to which it refers: it should be of a descriptive and illustrative character and prepared in such a way as to give the public a clear understanding of the proposals of the planning authority. It will be found that the written statement will not contain any arguments for or against the proposals included: these will be found in the written analysis.

The Act of 1947 requires that planning authorities should show on the development plans the stages by which developments will be carried out. It would be difficult, if not impossible, to show this information on the basic maps and the Minister has required that separate programme maps should be prepared which will give a broad indication of the work which the planning authority expects will be undertaken by the end of the first five years from the date of the approval of the plan. The remainder of the proposals represent the second stage of development extending over the subsequent 15 years. It will be remembered that planning authorities are under a duty to review the development plan every five years and it will be possible at these quinquennial reviews to show more detailed staging for the later development. It follows that the proposals included in the first five-year period are reasonably firm, while the forecast for the following 15 years will, in all probability, be put forward only as an approximate indication of future intentions.

The merits of the proposals in the plan must be examined in the light of the factors which will determine the amount of development likely to take place, and these include the resources, in terms of labour and materials, likely to be available for the erection of buildings and works, the probable level at which capital expenditure can be expected to proceed, the lack or the availability of suitable sites for redevelopment, the rehousing liability, the ripeness of the land for the purposes of redevelopment, and the need to avoid unnecessary interruption in the economic and industrial life of the community.

Problems arising out of a Development Plan

Having considered the statutory duties which a planning authority must fulfil, we can now consider some further

[3] See the *Encyclopædia of Planning, Compulsory Purchase and Compensation*, Vol. 1, Part IV, at p. 1268.

problems which are likely to arise out of the preparation of such a plan :

(*a*) *Finance.*

It appears from a report of a development plan inquiry (*ante*, p. 97) that a number of objectors in that case pressed for figures of the estimated cost of carrying out the development plan, and they argued that financial witnesses had been called for this purpose at two previous inquiries. In the case under review, no financial witness was called and it was stated on behalf of the corporation that it was quite impossible to give reliable public forecasts of the costs of an improvement to be made years hence, and that " detailed finance at an inquiry of this nature, therefore, is wholly irrelevant and, incidentally, would have prolonged the inquiry interminably as well as uselessly." While agreeing that financial estimates of the cost of bringing a development plan into operation are difficult to make, and that detailed figures of the cost of items such as individual school proposals would be out of place, it is submitted that financial considerations are far from irrelevant and, indeed, have an important bearing on the practicability of the proposals in the plan.

Some guidance on this matter is to be found in Circular 97.[4] It is there pointed out that as the Written Statement is an integral part of the development plan, care should be taken not to include matter which the Minister is unlikely to be in a position to approve because he would not wish to commit himself to a general statement of policy. The Circular continues " The Minister of Town and Country Planning is concerned in the location of development: and although he is interested in obtaining a general assessment of its cost, this should be presented as part of the written analysis which does not require his formal approval." It is clear from this passage that the Minister will expect an indication of the probable gross capital outlay involved in the proposals, although he is of the opinion that this should be shown in the analysis accompanying the plan. The matter, however, does not end there, for the Programme Map is an integral part of the statutory plan and the Minister requires that the Written Statement should contain a brief general note on the staging of development indicated in the Programme

[4] See the *Encyclopædia of Planning, Compulsory Purchase and Compensation*, Vol. 1, Part IV, at p. 1456.

Map, and on the main factors which determine the amount of development that can take place within the five and 15 year periods. These factors must, of necessity, include such considerations as the amount of labour and materials likely to be available, the level at which capital expenditure may be expected to run, and the probable burden to be borne by the rates. It has also frequently been pointed out that it is the duty of the planning authority to place before the public as full an account of their intentions as is practicable. The value of financial estimates in the preparation of a plan is well illustrated by negotiations over the possible construction of a new motor way round inner London : detailed examination of the problem showed that the cost of the necessary land acquisition and works for this single project would not be less than £100 million, and in May, 1950, the Government made it quite clear that such a proposal would be unacceptable. A plan that does not take into account either the time it will take to bring it into effect, or the cost it will involve, is no plan at all.

In conclusion, it is suggested here that it should be both possible and practical to estimate the probable capital resources which will be available to the planning authority, although it will be easier to do so with greater accuracy for the first period than for the second period of the plan. Factors which will assist in such a calculation are the gross capital expenditure in recent years, the rate of change in that expenditure over the past two or three years, the prospect of additional labour, materials and technical staff being available and the additional burden which will fall on the rates as a result of debt charges and maintenance costs in respect of new development. Only when such figures have been prepared will it have been possible to allocate the probable resources between the various departments and services concerned. The economic aspects of planning should take into account both the financial burden likely to fall upon the authority as a result of the proposals and the potential loss which these proposals may inflict upon individuals or the community at large.

(*b*) *Areas of Comprehensive Development*

This subject has already been considered on previous occasions and recently by the Comptroller and Solicitor to the Corporation of the City of London (*ante*, p. 70): the conclusions reached by him appear clearly to be right. Confirmation for his view that there can be a defining of land as

an area of comprehensive development in a plan without its being in any way designated as subject to compulsory acquisition is to be found in para. 11 of Circular 59,[5] where it is stated that it is not a necessary corollary to the definition of an area of comprehensive development that it is intended that any of the land should be acquired compulsorily or otherwise. It has surely been in the mind of the Minister that opportunities should be given to the various landowners in such an area to get together in order to prepare a private scheme of comprehensive development which will be acceptable to the local planning authority.

It is not possible to lay down any broad guide for the assistance of those who wish to scrutinise in detail the proposals for such areas of comprehensive development, as the circumstances in each case may vary very considerably. It will, of course, be necessary to have in mind the duties of planning authorities in regard to the submission of proposals for such areas and to examine them in the light of the directions given by the Minister. These can briefly be summarised as enabling a planning authority to define as an area of comprehensive development any area which in the opinion of that authority should be developed or redeveloped as a whole for the purpose of dealing satisfactorily with extensive war damage or conditions of bad lay-out or obsolete development, or for the purpose of providing for the relocation of population or industry or the replacement of open space in the course of development or redevelopment of any other area or for any other purpose specified in the plan. The proposals must be accompanied by maps drawn to a scale of 25 inches to one mile and by a written statement and a use zone table. A programme map staged in periods of not more than five years must also be produced. In particular, streets forming the main framework of residential, industrial or business areas have to be defined. The Minister has instructed planning authorities that it would be unwise to attempt to prepare plans for such areas in which development is unlikely to take place within 20 years and that this point should be carefully borne in mind in determining the size and boundaries of an area to be defined. This is the background against which such proposals must be examined in order to see whether they comply with the limitations given by the Minister.

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[5] See the *Encyclopædia of Planning, Compulsory Purchase and Compensation*, Vol. 1, Part IV, at p. 1268.

One further point should be borne in mind—namely, the probable cost of such schemes and the burden which may be expected to fall on the rates. Grant is payable towards losses which may be incurred by a local authority in dealing with areas which, by reason of extensive war damage, need comprehensive redevelopment as a whole: when capitalised this grant is equivalent to approximately 54 per cent. of the loss. It is evident, therefore, that the local authorities—in other words, the ratepayers—will have to bear an unduly large share of the cost of bringing such an area into conformity with modern town planning standards. For areas of "blight" or "obsolescence" the rates of grant will vary according to the alleged poverty or wealth of the area and here the grant, if capitalised, may be as low as 23 per cent. of the loss.

(*c*) *Road Proposals*

The survey referred to above should include an appreciation of the main traffic and circulation problems and difficulties, and provide an outline of the solutions proposed. The survey may be found to be based upon an investigation of the origin and destination of traffic in the area and a traffic flow survey; the bus, trolley bus and coach routes will have been surveyed and car parking facilities summarised. Other factors on which information will be given are the incidence of accidents, traffic density and the growth and volume of traffic. The proposals should be examined against the information so provided and in the light of the probable cost and the supply of labour and material which can be expected to be available.

(*d*) *Density*

The problem of controlling the amount of population in a given area is complex and obscure, but requires careful investigation as the amount of residential accommodation to be permitted on redevelopment is controlled under this head. The owner of a site ripe for redevelopment is obviously and directly affected by proposals which may allow him to rebuild at a density varying, for example, from 70 to 200 persons per acre, according to the zone in which the property is situated.

In each residential area on the Town Map there will be found a label containing figures dealing with the population to be accommodated in the area. The first thing to do is to establish the exact nature of these figures, *i.e.*, whether they are gross or net population density figures and whether they

are ultimate figures or limited to the 20-year period. The net population density is the number of persons living in the dwelling-houses and other residential buildings on the land divided by the net area of the land in acres, and for this purpose the net area of the land includes the sites of the houses and their curtilages, together with any small private open spaces included in the lay-out, plus half the width of any street.

The gross population density is the number of persons living in a predominantly residential area divided by the gross area of the land in acres : in this case the area of land includes schools, shops, offices, cinemas, local service industries, churches and public buildings. If it is sought to compare the proposals of one authority with those of another, it will, of course, be necessary to see that the proposals are based on the same basis of calculation : for example, it will be found that in Middlesex the proposals are based on gross density figures, while in the County of London the density figures are net.

The second point which seems to require examination is the relation between density proposals and the control of future development. If gross figures are used it seems that control will be able to operate within wider limits than if net figures are used : while this elasticity would be welcome, it involves a greater degree of uncertainty for the landowner. On the other hand, it may be argued, in the past density control has been based on an ultimate net density figure and that unless such proposals are included in the development plan and approved by the Minister, objections to such control may well be made later on the ground that they did not form part of the plan and are thus without statutory approval. It will now be apparent that density proposals may vitally affect the interests of owners of land ripe for redevelopment and they should be examined with the greatest attention.

In conclusion, it should be pointed out that for a period of at least six weeks after the planning authority have advertised that a plan has been prepared and submitted to the Minister, any objection to the plan may be sent in to the Minister: any person making such an objection may be heard at the public inquiry. The Minister may in due course approve the plan with or without modifications, and this fact will in turn be advertised. The planning authority subsequently has the duty of reviewing it at least once every five years and the procedure on each occasion will resemble that of the initial

inquiry : there is thus an opportunity to amend the plan in the light of subsequent developments and changing national needs and resources. Provision for the subsequent amendment of the plan is contained in s. 6 of the Act of 1947. Proposals for alterations may be submitted by the planning authority at any time and the section ensures that a review will take place every five years. The importance of flexibility needs no stressing, but it is undesirable that changes should be made so frequently so as to introduce confusion and uncertainty. It may therefore be desirable at the public inquiry to try to determine the intentions of the planning authority with regard to the submission of future amendments to the plan.

The Incidence and Exercise of Compulsory Powers for the Purchase of Land

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From an Address given to the Chartered Auctioneers' and Estate Agents' Institute, on Thursday, January 31, 1952.

I. Introductory

1. The compulsory purchase of land is today an intricate subject of ever increasing importance. It is intricate because the law on the subject is involved and it is of ever increasing importance because changes in economic and social conditions have rendered its incidence a matter of daily occurrence in one part of the country or another.

2. The legal title in, and actual physical possession of, land cannot be taken from their owner against his wish except with the authority of Parliament as expressed in an Act of Parliament itself or in some instrument (whether called a Provisional Order, or a Compulsory Purchase Order, or an Authorisation in Writing) made under, and deriving its power from, an Act of Parliament.

II. Enabling Acts of Parliament

3. Nearly two centuries ago, when people began digging canals for the purpose of improving means of communication throughout the land and thereby meeting the needs of the times as stimulated by the Industrial Revolution, it was customary for the necessary powers of compulsory purchase to be obtained by an *ad hoc* Act of Parliament containing all that was required to enable the necessary land to be purchased (whether the landowner wanted to sell it or not) in order to carry out the particular public works dealt with in the Act. In short, the individual landowner's right to hold and retain his land was subjugated to the needs of the community as a whole and this subjugation was sanctioned and authorised by a Sovereign Parliament whose Acts were (and are) unchallengeable.

4. After the canals came the railways and other developments in social life which called for the acquisition of land by public bodies for public purposes. In 1845 the Lands Clauses Consolidation Act consolidated (as its title suggests) the standard clauses which habitually found their way into Acts of Parliament empowering the compulsory purchase of land. But it was still necessary for an *ad hoc* enabling Act to be obtained from Parliament in respect of each individual programme of public works (*e.g.*, canals, railways, cemeteries, gas works, water works, etc.) which it was desired to carry out. The Lands Clauses Consolidation Act, 1845, was not itself an enabling Act; it did not confer any power to acquire land compulsorily nor did it prescribe any form of procedure whereby such power might be obtained.

5. As the nineteenth century passed along, Parliament enacted a number of public general enabling Acts empowering the compulsory purchase of land for specified purposes. The procedure for authorising the compulsory purchase of land under these general enabling Acts varied a good deal although when the acquiring authority was a local authority the procedure was usually by means of a provisional order.

III. Provisional Orders

6. Briefly, provisional order procedure involved the making (under the authority, of course, of an Act of Parliament—usually the Public Health Act, 1875) of an order authorising the compulsory purchase of the requisite land by the local authority concerned. The Provisional Order was made by a department of the central government (the Local Government Board and its successor the Ministry of Health) at the request of the local authority. Before making the Order the Board would hold a local inquiry but the Order itself, when made by the Board, did not automatically come into force. Its operation was *provisional* (hence the name "Provisional Order") on an Act of Parliament being obtained to confirm the Order made by the Local Government Board. One confirmation Act could (and often did) confirm quite a number of Provisional Orders set out in the Schedule to the Act and relating to entirely different lands widely dispersed throughout the country. The Confirmation Bill was, of course, subject to opposition and attack in Parliament and might fail to get through, in which case the Provisional Order could never become operative.

7. As will be seen, Provisional Order procedure was

cumbersome and hazardous and it was not surprising that many local authorities preferred to fight through Parliament their own *ad hoc* Act enabling them to purchase land compulsorily, rather than go through the routine of the Provisional Order with its local inquiry followed by an enabling Order followed by a confirming Act of Parliament.

IV. Compulsory Purchase Orders

8. In course of time the Provisional Order procedure was progressively replaced by an entirely new enabling procedure known as the procedure by Compulsory Purchase Order. Housing legislation (later assisted by town planning legislation) was responsible for the development of this new procedure under which powers of compulsory purchase could be conferred on local authorities by means of a compulsory purchase order *made* by the local authority under the powers of an Act of Parliament (*e.g.*, the Housing, Town Planning, etc., Act, 1909—now the Housing Act, 1936) and *confirmed* by some department of the central government (*e.g.*, the Ministry of Health) after which the compulsory purchase Order, if not challenged in the courts within a limited period on the ground of legal invalidity, came into full force and effect and was thereafter immune from challenge. There was no need for any confirming Act to be introduced into, and fought through, Parliament.

9. Different Acts of Parliament conferred power to acquire land compulsorily by the procedure of compulsory purchase order, but the *method* whereby these orders could be obtained varied in detail from Act to Act. Moreover, the procedure by means of provisional order still remained the only method of acquiring land compulsorily under those Acts of Parliament which used this method. Accordingly, it is gratifying to record that in 1946 an attempt was made to breathe some measure of uniformity into these varying procedures and to this end Parliament passed the Acquisition of Land (Authorisation Procedure) Act, 1946.

V. Acquisition of Land (Authorisation Procedure) Act, 1946

10. This important Act prescribed (s. 1) a uniform method whereby (a) local authorities and (b) the Minister of Transport (in his capacity of a highway authority) were in future to obtain compulsory purchase orders under any public general Act which was in force on April 18, 1946, the date when the 1946 Act came into operation. (The procedure of the 1946

Act may also be applied (s. 7 of the 1946 Act) by Ministerial order to the acquisition of land under any local Act in force on April 18, 1946, as if such local Act were a public general Act). In other words, whatever form of compulsory purchase procedure was prescribed by a public general Act already in force prior to the 1946 Act, that form of procedure was replaced by the uniform compulsory purchase order procedure of the 1946 Act so far, at least, as compulsory purchases by the Minister of Transport (as a highway authority) and by a local authority were concerned. In this connection it may be stated that " local authority " means (s. 8 (1) of the 1946 Act)—

> the council of a county, county borough, metropolitan borough or county district, the common council of the City of London, the receiver for the metropolitan police district or any other authority being a local authority within the meaning of the Local Loans Act, 1875, and includes any drainage board and any joint board or joint committee if all the constituent authorities are such local authorities as aforesaid. and includes also the Honourable Society of the Inner Temple and the Honourable Society of the Middle Temple.

VI. Acquisition outside the 1946 Act

11. Let me repeat that the 1946 Act applied only to compulsory purchases by the Minister of Transport and by local authorities as defined in the Act. Thus the Act did *not* apply to a number of persons and bodies entitled to acquire land compulsorily under a variety of Acts passed in the last century as, for example, The Defence Acts, 1842 to 1935 (authorising the acquisition of land for the defence of the Realm and for the purposes of the Service Department of the Crown); the Military Lands Act, 1892 (land for the Royal Forces); The Admiralty (Signal Stations) Act, 1815, and Lloyd's Signal Stations Act, 1888 (land for signal or telegraph stations); the Prison Act, 1865 (land for prisons); and others. Coming to more recent times it is to be noted that the 1946 Act has no application whatsoever (by virtue of special exceptions included in the 1946 Act itself, s. 1 (4)) to the acquisition by local authorities of land for light railways or (more importantly in these days) of slum clearance land under Part III of the Housing Act, 1936. Nor does the 1946 Act apply to the compulsory purchase of land by new town corporations under the New Towns Act, 1946, which Act still employs the procedure of the Town and Country Planning Act, 1944, notwithstanding the repeal of that Act by the Town and Country Planning Act, 1947. This seems a regrettable complication of the general position and it is a pity that new town corporations could not

have been given power to acquire land by the reformed procedure of the 1946 Act as if they had been themselves local authorities.

VII. Further application of the 1946 Act

12. Although the 1946 Act (as has been stated) was enacted so as to apply only to acquisitions of land by the Minister of Transport and by local authorities acting under enabling Acts already in force on April 18, 1946, its procedure has since been applied, by subsequent legislation and subject to modifications and exceptions in particular cases, to the compulsory purchase of land by the following authorities and Ministers under the following Acts, that is to say:—

(1) by the Minister of Health or a local health authority under s. 58 of the National Health Service Act, 1946;
(2) by fire authorities under the Fire Services Act, 1947;
(3) by the Minister of Agriculture and Fisheries or a small-holdings authority under the Agriculture Act, 1947;
(4) by the British Transport Commission under s. 8 of the Transport Act, 1947;
(5) by Ministers, local authorities, statutory undertakers or the Central Land Board under Part IV of the Town and Country Planning Act, 1947;
(6) by electricity boards under s. 9 of the Electricity Act, 1947;
(7) by county borough councils under Part III of the National Assistance Act, 1948;
(8) by river boards under the River Boards Act, 1948;
(9) by area boards under s. 11 (1) of the Gas Act, 1948.

13. The result of this more general extension of the scope of the 1946 Act is to make the authorisation procedure prescribed by that Act more important for its incidence is now more widespread than ever before.

VIII. Authorisation Procedure under the 1946 Act

14. The procedure created by the 1946 Act embraces two separate and distinct methods for compulsory purchase of land. The first method, which is permanent in character, is acquisition by compulsory purchase order (s. 1 of 1946 Act) and is really a re-enactment with modifications (all calculated to speed up the process) of the method of acquisition by compulsory purchase order formerly available (but on a temporary basis only) under the provisions of s. 2 of the Public Works Facilities Act, 1930, which latter Act came to an end when the 1946 Act came into force. The second method of acquisition,

which is (or rather, was) temporary in character, was an exceptionally quick method to be used only in special circumstances, and was known as acquisition by Authorisation in Writing (s. 2 of 1946 Act). It was similar to the procedure available to local authorities under the Housing (Temporary Accommodation) Act, 1944, until December 31, 1945, for the speedy acquisition of land required for temporary houses. This second method of acquisition by Authorisation in Writing came to an end (s. 2 (1) of 1946 Act) on April 18, 1951 (five years after the commencement of the 1946 Act) and is now no longer available.

15. Under the compulsory purchase order procedure of the 1946 Act (*vide* s. 1 and Sched. I to 1946 Act), the order is made in the first place by formal resolution of the authority seeking to acquire the land (the purchasing authority), and then confirmed by the confirming authority, that is to say, by the particular Minister of the Crown whose duty it is to control on behalf of the central government those matters in respect of which the purchasing authority seeks to acquire the land.

16. The compulsory purchase order itself must be made in the form prescribed in the Compulsory Purchase of Land Regulations, 1949, dated March 22, 1949 (S.I. 1949, No. 507), and before submitting an order to the confirming authority the purchasing authority must publish a local press advertisement in two successive weeks stating (inter alia) that the order has been made and is to be submitted for confirmation, the purpose for which the land is required, and specifying the time (not being less than twenty-one days) within which objections to the Order can be made to the confirming authority. Individual notices containing the foregoing information must also be served on owners, lessees and occupiers of land affected but the confirming authority can, in cases of special difficulty (as, for example, where it is difficult to trace an owner or where land has been severely bombed and boundaries have been obliterated) direct that the service of these individual notices may be dispensed with (thereby creating a saving of time and work for the purchasing authority), and that in lieu of them a composite notice addressed to " the owners and any occupiers " of the land may be posted conspicuously on the land itself.

17. The confirming authority must consider any objections which are made to the compulsory purchase order, but the public local inquiry, which, prior to the 1946 Act, had been customary in such cases, may now be dispensed with and in substitution therefor a private hearing of a very informal

character may be accorded to any particular objector. In certain cases the public local inquiry or, as the case may be, the private hearing may be dispensed with for the confirming authority can now require an objector to state the grounds of his objection in writing, and if satisfied that the objection relates exclusively to matters of compensation and not to the point of whether or not the purchasing authority should be allowed to acquire the land, the confirming authority may disregard the objection, leaving, of course, the matter of compensation to be dealt with at a later stage when the purchasing authority seeks to put into force the compulsory powers conferred upon it by the compulsory purchase order when it comes into operation.

18. As soon as possible after the confirmation of the compulsory purchase order the purchasing authority must publish in the local press a notice of the confirmation and must also serve a similar notice, together with a copy of the order as confirmed, on those owners, lessees and occupiers (if any) upon whom individual notices as to the making of the order were previously served.

19. The compulsory purchase order will, subject to what is mentioned later about special parliamentary procedure in certain cases, come into force on the day on which the advertisement of its confirmation appears in the local press but within a period of six weeks thereafter its validity may be challenged in the High Court.

20. The only grounds on which the compulsory purchase order can be challenged in the High Court are two in number, the first being that the order is beyond the powers of the enabling Act, and the second, that some requirement of the 1946 Act touching the working of the order has not been complied with. The High Court may quash the order in whole or in part if satisfied that the order is in law *ultra vires* or if satisfied that not only has some requirement of the 1946 Act not been complied with, but that the interests of the party challenging the order have been thereby substantially prejudiced. From the determination of the High Court there is an appeal to the Court of Appeal whose decision is generally final, there being no further appeal to the House of Lords except by leave of the Court of Appeal.

21. If a compulsory purchase order relates to—

(*a*) land belonging to a local authority, or a statutory undertaker (as, for example, one of the nationalised industries), or

(*b*) land forming part of a common, open space (which includes a disused burial ground (s. 8)) or fuel or field garden allotment, or held inalienably by the National Trust, or

(*c*) land which is, or is the site of, an ancient monument or other object of archaeological interest,

the compulsory purchase order cannot in certain circumstances (*vide* Part III of Sched. I to the 1946 Act) come into operation until it has been subjected to the special parliamentary procedure the details of which are contained in the Statutory Orders (Special Procedure) Act, 1945.

22. A purchasing authority can serve notice to treat immediately a compulsory purchase order comes into operation and can then enter and take possession of any land included in the notice on giving 14 days' notice of its intention so to do, notwithstanding the fact that the purchase of the land has not yet been completed (*vide* Sched. 2 to the 1946 Act). Interest, of course, is payable as from the date of entry until the date of completion on the amount of the purchase money ultimately paid. The rate of interest is at present [1] 3½ per cent. (*vide* Town and Country Planning Act, 1947, s. 57, and the Acquisition of Land (Rate of Interest on Entry) Regulations, 1947 (S.R. & O. 1947, No. 791)).

23. It will be seen from the foregoing outline of the 1946 Act, that not only local authorities and Ministers of the Crown, but also statutory undertakers (including the nationalised industries) can now make use of the authorisation procedure of the 1946 Act in many instances in which some enabling Act of Parliament has empowered them to purchase land compulsorily. May I be permitted to emphasise (for it is not always clearly appreciated) that the 1946 Act does not itself confer any power to acquire land compulsorily but provides that in many instances (although not all) in which that power is conferred by other Acts of Parliament, the procedure for acquiring the land compulsorily shall be the reformed procedure created by the 1946 Act itself.

IX. The Town and Country Planning Act, 1947, and the Designation of Land as subject to Compulsory Purchase

24. This leads to a consideration of the matter of designating land under the Town and Country Planning Act, 1947, as liable to compulsory purchase. Every local planning

[1] The rate of interest has been increased to 4½ per cent. per annum as from March 5, 1952; see *post*, p. 223.

authority must, under the 1947 Act, make a development plan for its area and in its plan it may, under s. 5 (2) of the 1947 Act—

(*b*) designate, as land subject to compulsory acquisition by any Minister, local authority or statutory undertakers any land allocated by the plan for the purposes of any of their functions (including any land which that Minister or authority or those undertakers are or could be authorised to acquire compulsorily under any enactment other than this Act);

(*c*) designate as land subject to compulsory acquisition by the appropriate local authority—

(i) any land comprised in an area defined by the plan as an area of comprehensive development (including any land therein which is allocated by the plan for any such purpose as is mentioned in paragraph (*b*) of this subsection), or any land contiguous or adjacent to any such area;

(ii) any other land which, in the opinion of the local planning authority, ought to be subject to compulsory acquisition for the purpose of securing its use in the manner proposed by the plan.

25. This power of designating land as subject to compulsory acquisition will be seen to be a very wide power indeed when it is fully appreciated how broad are the purposes (as set out in s. 5 (2) of the 1947 Act and quoted above) in respect of which compulsory purchase powers can be obtained through the medium of designation, and when it is further realised how many are the authorities who can resort to the medium of designation in order to secure compulsory purchase powers. These authorities are mentioned in s. 5 (2) of the 1947 Act as being simply any "Minister," any "local authority" or any "statutory undertakers." These expressions, however, are subject to extended definition in s. 119 (1) of the 1947 Act in consequence of which it may be noted that :—

(i) "Minister" includes the Treasury, the Admiralty, the Board of Trade and any other government department;

(ii) "local authority" means the council of a county, county borough, metropolitan borough or county district, the Common Council of the City of London and any other authority being a local authority within the meaning of the Local Loans Act, 1875, and includes any drainage board and any joint board or joint committee if all the constituent authorities are such local authorities as aforesaid; and

(iii) "statutory undertakers" means person authorised by any enactment to carry on any railway, light railway,

tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of electricity, gas, hydraulic power or water.

26. The powers of designating land are wide, but there is a time limit. Land cannot be designated for compulsory purchase if not likely to be actually acquired within ten years (seven years in the case of agricultural land) of the development plan becoming operative (s. 5 (4) of the 1947 Act).

27. Any land designated in a development plan will be capable of being acquired compulsorily by the purchasing authority by means of a compulsory purchase order (ss. 37 and 38 of the 1947 Act) made in accordance with the procedure of the 1946 Act. It may be that in future the device of getting land designated in a development plan may well be resorted to more and more by Ministers, local authorities and statutory undertakers seeking enabling powers for the compulsory purchase of land. They may well prefer this method of obtaining compulsory purchase powers over land to that of introducing an enabling Bill into Parliament and fighting it through all the customary parliamentary hurdles until it becomes an Act or fails in the attempt. It would appear that development plans (made, of course, under the statutory authority of the 1947 Act) will themselves take the place of those public general enabling Acts or those local *ad hoc* enabling Acts which have hitherto been used for conferring powers of compulsory purchase on Ministers, local authorities and statutory undertakers. This is a new departure and herein lies one of the most important and far reaching features of any development plan made under the 1947 Act. Especially will this be realised once it is appreciated how wide are the purposes for which land can be designated for compulsory purchase under the 1947 Act and how many are the persons and bodies who can become purchasing authorities under that Act. These purposes and these persons and bodies are mentioned in s. 5 (2) of the Act and I have already quoted them above in paras. 24 and 25; they merit the closest scrutiny for they indicate over how widespread a territory can the right of compulsory purchase now be exercised by all manner of persons and public bodies.

28. Designation of land in a development plan is, then, tantamount to the conferring of the statutory power of compulsory purchase by an enabling Act of Parliament. After

designation comes the procedure of acquisition and this is by compulsory purchase order made in accordance with the 1946 Act. Objection to the compulsory purchase order can, of course, be lodged under the 1946 Act, but it should be noted that, by s. 45 (1) of the 1947 Act, the confirming authority may disregard any such objection if of the opinion that the objection to the compulsory purchase order is in substance an objection to the provisions of the antecedent development plan defining the proposed use of the particular land included in the order or of any other land. This is an important provision because once land has become designated in a development plan, this provision will clearly make it difficult, at the succeeding compulsory purchase order stage, to formulate any objection which the confirming authority will be unable to ignore. In other words, once land has become designated in a development plan it will be difficult to formulate, at the succeeding compulsory purchase order stage, any objection, which will leave the confirming authority with no alternative but to hold a public local inquiry, or grant a private hearing, before confirming the compulsory purchase order. Hence if it is so desired to resist compulsory purchase the fullest objection must be made at the development plan stage to the designation of the land; the designation must not be allowed to go by default in the belief that big guns can be brought up at a later date if and when the compulsory purchase order (deriving from the designation) is made.

X. Expedited Completion of Purchases

29. Another important feature of the 1947 Act which should be mentioned in any address on compulsory purchase is the provision in s. 39 whereby the Minister of Housing and Local Government can direct, in urgent cases, that the expedited completion procedure of Sched. VI to the Town and Country Planning Act, 1944 (as now continued in force by and set out in Sched. XI to the 1947 Act) shall apply to a compulsory purchase order made under s. 38 of the 1947 Act relating to the purchase of land for town planning development or redevelopment. (This expedited completion procedure does *not* apply to a compulsory purchase order made under s. 37 of the 1947 Act relating to the purchase of land by Ministries, local authorities or statutory undertakers for the purposes of their statutory functions). Where expedited completion applies the purchasing authority may, without waiting for the service of

individual notices to treat, execute a vesting declaration vesting the land in themselves. The declaration takes effect and acts as a conveyance of the land at the expiration of a specified period after the service upon specified persons of a notice stating the effect of the declaration. No individual conveyances are executed though, in order to receive compensation, owners must, of course, show title to land included in the vesting declaration.

XI. Some Practical Points

(*a*) *Effect of a Notice to Treat*

30. The service of a notice to treat does not affect the ownership of the land included in the notice nor does it create a contract of sale as between the purchasing authority and the landowner. What it does is to place both parties in the position to require compensation to be assessed and the purchase completed subject to the right of the purchasing authority to withdraw the notice to treat within six weeks of the delivery of a formal claim. An enforceable contract arises when in pursuance of a notice to treat the purchase price for the land included in the notice is actually ascertained. After the service of a notice to treat a land-owner cannot increase the burdens of the purchasing authority by creating new or additional interests in the land which will hinder the purchasing authority. A land-owner may, after the service of a notice to treat, sell or assign his interest to a third party against whom the notice to treat can be exercised by the purchasing authority. Quite apart from the right, already mentioned, to withdraw a notice to treat a purchasing authority may be estopped from relying upon such a notice if by its conduct it has in any way induced the land-owner to regard the notice to treat as having been abandoned.

(*b*) *Effect of taking possession*

31. Under the Acquisition of Land (Authorisation Procedure) Act, 1946, when a compulsory purchase order has come into operation and a notice to treat has been served, a purchasing authority on giving fourteen days' notice may enter upon the land even though compensation has not as yet been agreed or assessed and there is accordingly in law no contract for sale. Having entered into possession the purchasing authority may then proceed to demolish buildings and use the land for the purposes for which it is being compulsorily acquired. Interest

is, however, payable from the date of entry upon the land to the date of completion of the purchase, such interest being at the rate of $3\frac{1}{2}$ [2] per cent. on the amount of purchase money ultimately agreed or assessed (*vide* Town and Country Planning Act, 1947, s. 57 and S.R. & O. 1947, No. 791). Responsibility for insurance and repairs after the taking of possession and before completion of the purchase is dealt with later.

(*c*) *Can a Purchasing Authority be made to take possession ?*

32. A purchasing authority cannot be made to take possession immediately after the service of a notice to treat. The service of notice to treat and the assessment of compensation by agreement or, in default of agreement, by the Lands Tribunal, constitute a quasi-contract which is enforceable by an action for specific performance. Such an action may thus be brought by a vendor, if the purchasing authority refuse to pay the compensation agreed or awarded, or to accept a conveyance of the land. In these circumstances the purchasing authority can raise questions of title and specific performance will not be decreed unless a good title has been shown, or until the title has been investigated.

(*d*) *Responsibility for Fire Insurance and Repairs after Notice to Treat and before or after possession*

(1) *As to responsibility for fire insurance*

33. As already indicated, the service of a notice to treat, when followed by an ascertainment of price or compensation, establishes a relationship analogous to that of vendor and purchaser between the parties in the same way as a formal agreement for sale. S. 47 of the Law of Property Act, 1925, provides that where, after the date of a contract for sale, money becomes payable under an insurance maintained by the vendor, the money is, on completion of the contract, to be held by the vendor on behalf of the purchaser, subject to any requisite consents of the insurers and to the payment by the purchaser of a proportionate part of the premium from the date of the contract. It is by no means certain, however, that even when the compensation has been ascertained, there is a contract within the meaning of this section.

34. In *Phoenix Assurance Co.* v. *Spooner* [1905] 2 K.B. 753, it was held that the risk of fire was the risk of the

[2] The rate of interest as from March 5, 1952, is $4\frac{1}{2}$ per cent.; see *post*, p. 223.

Plymouth Corporation (the purchasing authority) from the time of the notice to treat and that the amount payable to the owner by the purchasing authority was the value of the property at the date of the service of the notice to treat, that is to say, the value before the fire occurred.

35. It will be seen, therefore, that the risk of fire would be the purchasing authority's risk on the service of a notice to treat, since, at least until the ascertainment of price or compensation, there would not be a concluded agreement between the parties entitling the purchasing authority, under s. 47 of the Law of Property Act, 1925, to the benefit (subject to conditions) of any insurance cover effected by the vendor.

36. In view of the decision in *Phœnix Assurance Co.* v. *Spooner* it would seem to be prudent for the purchasing authority to effect, as soon as a notice to treat has been served, appropriate insurance cover in cases where buildings or parts of buildings remain on the land which is being purchased.

(2) *As to Responsibility for Repairs*

(i) *After notice to treat and before possession is taken*

37. A notice to treat by itself does not create a contract for sale and the land which forms the subject of the notice remains the property of the owner in law and in equity (*Haynes* v. *Haynes* (1861) 1 Dr. and Sm. 426). The relation analogous to vendor and purchaser is not created between the parties until the compensation has been settled. Therefore, where a notice to treat has been served and possession of the property has not been taken, the owner continues to be liable for repairs.

38. Where a notice to treat has been served and the compensation has been ascertained, a quasi-contract comes into existence and the purchasing authority becomes the owner of the property in equity. Accordingly, until the completion of the purchase, the vendor who remains in possession of the property is regarded as a trustee for the purchasing authority and must, therefore, manage the property with the same degree of care as that which a trustee owes to his beneficiaries (*Clarke* v. *Ramuz* [1891] 2 Q.B. 456). The duty of the vendor extends to the carrying out, at his own expense, of all ordinary repairs necessary to prevent deterioration to the property pending completion (*Royal Bristol Permanent Building Society* v. *Bomash* (1887) 35 Ch.D. 390). If the state of the property is such that permanent improvements of a substantial nature are necessary in order to prevent deterioration,

it seems that a vendor who carries them out would be entitled to recover the cost from the acquiring authority (*Phillips* v. *Silvester* (1872) L.R. 8 Ch. 173 at p. 176). On the other hand, the risk of loss from any cause which is *not* attributable to the default of the vendor (as, for instance, loss from floods or fire) lies on the purchasing authority.

39. If completion is delayed by default of the purchasing authority they will have no remedy if, after they have become in default, the property is allowed to fall into disrepair (*Minchin* v. *Nance* (1841) 4 Beav. 332). Unreasonable delay in completion would constitute default.

(ii) *After notice to treat and after possession is taken*

40. There does not appear to be any law precisely on this point but it would appear that once a purchasing authority have served notice to treat and followed this with notice of entry and in consequence have actually taken possession of the property, they are then in full control and the responsibility for the property is wholly theirs.

XII. Conclusory

41. Such important subjects as requisitioned land and the Requisitioned Land and War Works Act, 1945 and 1948, the assessment of compensation under the Acquisition of Land (Assessment of Compensation) Act, 1919, and Part V of the Town and Country Planning Act, 1947, and the settlement of disputed claims to compensation by the Lands Tribunal under the Lands Tribunal Act, 1949, cannot be considered in the time available for this review of compulsory purchase powers, and I now conclude with a reference to the title of this address —"The Incidence and Exercise of Compulsory Powers for the Purchase of Land." Never was the incidence of these powers more widespread, and never was their exercise more frequent, than it is today.

42. When compulsory purchase was in its infancy Parliament stood between the purchasing authority and the individual whose land was to be taken. The land could not be taken without the intervention of an Act of Parliament and Parliament sat as a kind of impartial arbiter between the rights of the individual on the one hand and the needs of the public on the other. That state of affairs has now passed. Acts of Parliament are now no longer required to be obtained by public bodies seeking to take land compulsorily. One Act (the Town and Country Planning Act, 1947) has provided all

the necessary Parliamentary sanction which is required to empower the compulsory purchase of land by all manner of Ministers, local government authorities and statutory undertakers for an indefinite period in the future. Parliament itself will not further come into the matter of these acquisitions except in the exceptional cases where the compulsory purchase order requires express parliamentary approval and is, accordingly, made subject to special parliamentary procedure. Compulsory purchase orders made by local authorities and statutory undertakers require confirmation in each case by the appropriate confirming authority, but that authority when confirming the compulsory purchase order is now, it is clearly settled, acting administratively and therefore is under no duty to act impartially as between the purchasing authority and the landowner affected by the order. Indeed, it is difficult to see, as the position has evolved, how any confirming authority today can be expected to act impartially. It is clear that the confirming authority cannot possibly be a disinterested party. On the contrary, it will have a policy to carry out and considerations of policy must necessarily play a part when the confirming authority is deliberating whether or not to confirm a compulsory purchase order made by some local authority, or some statutory undertaker, in relation to which the confirming authority stands as a kind of statutory godparent.

43. It is, in view of this state of affairs, all the more important that those who today exercise these vast powers of compulsory purchase, and who in so doing will (and it is no disrespect to them to say this) have primarily in mind the carrying out of a policy (whether it be in relation to electricity, gas, water, new towns, communications or the redevelopment of war-damaged areas) for which they are themselves peculiarly responsible—it is, I venture to say, all the more important that in the exercise of these powers the best possible advice should be obtained on *all* aspects of the matter which gives rise to the need for compulsory purchase, and that only the most enlightened counsels should be allowed to prevail. The incidence of the powers of compulsory purchase is now widespread; as the safeguard of purely disinterested control over their exercise is no longer available, that exercise, more than ever before, requires now to have the enlightened touch of imaginative statesmanship.

Development in Barsetshire

Application of the Chancellor's Concession in Claims against the Global Sum

The following conversation may be assumed to take place between S., a surveyor and D.V., the district valuer, during an informal discussion between them on a claim lodged on behalf of one of surveyor's clients :—

S. I see that according to the C.V. 109 you sent me the unrestricted value is put at £5,000 and the restricted value at £3,000. These figures are rather lower than I had anticipated, and I wondered whether in arriving at them you had taken into account the relaxation of " Rule 3 " [1] announced by the Chancellor of the Exchequer on December 15, 1950 ([1951] J.P.L. 98).

D.V. I haven't, because it doesn't apply.

S. Doesn't apply ! But I thought this was the very kind of case affected by the announcement. This claim concerns a piece of land with an area of about 1½ acres immediately adjoining my clients' main factory buildings. It was held by them on the appointed day for the purpose of extension and obviously has a special value to them over and above the market value as restricted by " Rule 3."

D.V. Evidently you haven't read the Chancellor's statement very carefully. He said: " Where, on the appointed day (July 1, 1948) a piece of land was, in fact, held by the owner of the adjoining land to whom, *and to whom alone*— it possessed this special value, the effect of Rule 3 is to reduce to little or nothing the development value disclosed by the claim, despite the fact that a substantial development charge may be incurred if the piece of land is, in fact, developed in this very likely manner."

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[1] Rule 3 of s. 2 of the Acquisition of Land Act, 1919, which reads : " The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department or any local or public authority: Provided that any bona fide offer for the purchase of the land made before the passing of this Act which may be brought to the notice of the arbitrator shall be taken into consideration : "

S. Well, I've read that and I thought it applied to cases such as mine.

D.V. No, because your land having its own road frontage and services has a value in the open market apart from the needs of a particular purchaser, in this case your client. The relaxation of Rule 3 applies to land which apart from the special purchaser cannot be sold in the open market—for instance, part of a factory yard with no separate access, or extension land adjoining a factory situated for some reason in an isolated position where there is no ordinary demand for factory land.

S. I still don't agree with you. I think this business is rather like the calculation of Annual Licence Value in the case of licensed premises—it is the "increased value" which is concerned.

D.V. I'm afraid I don't quite follow you.

S. I mean that the Chancellor, in saying "I have, therefore, requested the Central Land Board, when valuing claims under Part VI, to proceed on the basis of disregarding the provision in Rule 3 referred to above, in cases where the land was held before the appointed day by the claiming owner for the purpose of development in connection with his business carried on on adjoining land," was referring to the increased value which the land would have to a special purchaser. You, on the other hand, are giving the words a more restricted meaning.

D.V. Well, I'm instructed that the meaning I've given is the correct one.

S. From your own example I think not. You mentioned the land adjoining a factory in an isolated area as a case to which the relaxation applies. Yet if such a piece of land had separate road access you would presumably say it had a value in the open market for some purpose.

D.V. Yes, but that purpose would not be for the building of a factory. The demand for that would come only from the adjoining owner, whereas so far as your own land is concerned there would be many bidders for it as factory land.

S. But the highest bid would come from my clients, as the adjoining owners.

D.V. Yes, but that is excluded because it is a special bid.

S. Are you quite sure you are right? There is another factory immediately adjoining the land on the opposite side from

my clients. They do not own any land for extension and would presumably bid practically as much as my clients. Now, the wording of the Rule is "for which there is no market apart from the special needs of a particular purchaser." If, therefore, there is more than one buyer for the special purpose (in this case the extension of a factory) it is in my submission not excluded by the second part of the Rule. Nor does the first part of the Rule apply, because the building of a factory is not a purpose which can only be applied by statutory powers.

D.V. Your arguments are very ingenious. You are saying, I take it, that there is no need to apply the Chancellor's concession because the value of land to your clients is in any case not excluded by the Rule?

S. That is what you have led me to, although I came here intending to claim the concession.

D.V. Let's see what difference it will make. My figure of £5,000 unrestricted value is arrived at by taking the 1½ acres at £5,000 an acre, equals £7,500 and deducting £2,500 as the injurious affection and severance which your remaining land would suffer by the sale of this land.

S. But in a case not so very far away you said £7,500 an acre for development charge for back land.

D.V. That included the special value, and was for immediate development. In your case I have considered some deferment necessary.

S. I think the better position of my land cancels out the deferment. In other words you ought to have £10,000 an acre, deferred six years at 5 per cent., .75 = £7,500.

D.V. On that basis my calculation would be:—

	£
1½ acres at £10,000 an acre	15,000
Deferred six years at 5 per cent.	.746
say	11,250
Less deductions for injurious affection and severance (s. 61 (6) and (7) of the Act) ..	2,500
Unrestricted value	£8,750

S. I am prepared to agree that although with some reservation as to your deduction for injurious affection and

severance,[2] and I will accept your restricted value of £3,000.

D.V. In fairness, as I have agreed to relax Rule 3 in computing the unrestricted value the special value to your client ought equally to be considered in the restricted value.

S. I suppose there is something in that, although as I have conceded your deduction of £2,500 from the unrestricted value I thought you would retain the £3,000 restricted value.

D.V. S. 61 provides for these deductions to be made only in computing the unrestricted value.

S. Although an equal deduction would be suffered if the land were sold for its existing use.

D.V. Probably so, but the Act, as I have said, only applies the deductions to the unrestricted value.

S. It occurs to me that so far as that is concerned, as the development envisaged in this case is by the adjoining owner there would be no loss under the headings you mention.

D.V. The land has to be assumed to be sold, you know.

S. It is only a notional sale. You will remember that in a case of compulsory acquisition it was held that land had a value on such a notional sale even though the owners were in fact debarred from selling it.

D.V. I have given way to you considerably on the unrestricted value, and I must, to be consistent, put up the restricted value. I suggest $1\frac{1}{2}$ acres at £3,000 an acre instead of the £2,000 I had originally.

S. That is £4,500?

D.V. Yes; so the claim is agreed at:—

Unrestricted Value ..	£8,750
Restricted Value ..	4,500
Development Value	£4,250

S. Very well, subject, of course, to my clients' approval.

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[2] The application or otherwise of the principles of *Horn* v. *Sunderland* [1941] 2 K.B. 26 has already been well ventilated: [1949] J.P.L. 111.

Progress of Development Plans

(*Continued from p.* 151, *ante*)

The following is a continuation of the list of plans submitted to date (March 20, 1952). Any objections should be sent to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before the closing date indicated.

41. Ipswich County Borough Council.
Local Inquiry: March 12, 1952.

42. Bootle County Borough Council.
Local Inquiry: April 23, 1952.[1]

44. Barrow-in-Furness County Borough Council.
Local Inquiry: March 26, 1952.

45. Lancashire County Council.
Local Inquiry: June 17, 1952.

48. West Suffolk County Council.
Local Inquiry: April 3, 1952.

63. Dudley County Borough Council.
Submitted to Minister: February 16, 1952.
(*London Gazette*, February 22, 1952.)
Closing date for objections: April 7, 1952.

64. Great Yarmouth County Borough Council.
Submitted to Minister: February 14, 1952.
(*London Gazette*, February 22, 1952.)
Closing date for objections: April 10, 1952.

65. West Sussex County Council (Southern Section).
Submitted to Minister: February 15, 1952.
(*London Gazette*, February 22, 1952.)
Closing date for objections: April 15, 1952.

66. Hastings County Borough Council.
Submitted to Minister: February 19, 1952.
(*London Gazette*, February 22, 1952.)
Closing date for objections: April 12, 1952.

67. Eastbourne County Borough Council.
Submitted to Minister: February 28, 1952.
(*London Gazette*, February 29, 1952.)
Closing date for objections: April 21, 1952.

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[1] Amended date.

68. Manchester County Borough Council.
Submitted to Minister: February 22, 1952.
(*London Gazette*, March 4, 1952.)
Closing date for objections: April 30, 1952.

69. Middlesbrough County Borough Council.
Submitted to Minister: February 29, 1952.
(*London Gazette*, March 4, 1952.)
Closing date for objections: April 19, 1952.

70. Bury County Borough Council.
Submitted to Minister: February 28, 1952.
Closing date for objections: April 19, 1952.

71. Worcestershire County Council.
Submitted to Minister: February 29, 1952.
(*London Gazette*, March 7, 1952.)
Closing date for objections: April 30, 1952.

72. Lincoln (Parts of Lindsey) County Council.
Submitted to Minister: March 5, 1952.
(*London Gazette*, March 14, 1952.)
Closing date for objections: May 3, 1952.

59. London County Council.

It has been announced that nearly 1,000 objections were lodged against the London County Council's development plan before the closing date for objections.

Points from Development Plan Inquiries[1]

Canterbury County Borough Council[2]

There were over 230 objectors to the development plan for Canterbury, a large number of them relating to a central area of the town which had been defined as an area of comprehensive development for the purpose of dealing with extensive war damage. The whole of this area had been designated as subject to compulsory acquisition.

Nine members of the Bar and a number of solicitors and other professional representatives appeared for various objectors, and other objectors appeared in person.

Unauthorised objections

In his opening address the Town Clerk, who represented the Corporation, asserted that the number of objections had been artificially inflated, 19 objections having been duplicated, and a considerable number having been submitted by a firm of surveyors without the authority of the owners of the properties. It was alleged that in one case this had been done on behalf of a company which had been wound up some years previously, and the property in question had been conveyed to the Corporation in 1949. The Town Clerk alleged that the letter submitting this objection was a false document within the meaning of the Forgery Act, 1913.

Local planning authority's witnesses

Only one witness was called for the promoting authority. This was the City Architect and Planning Officer.

The Town Clerk stated, in reply to a question, that it was not his intention to call the Borough Treasurer or any financial witness, but said that any questions on the financial implications of the plan could be put to the Planning Officer.

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[1] The Editor will be glad to receive any news of points of general interest arising at development plan inquiries, especially questions relating to legal or procedural matters.

[2] A letter is published at p. 242, *post*, referring to this Inquiry and the question of cost of a development plan. A parliamentary reply to a question raised by the M.P. for the area of this authority is included at pp. 225–6.

Procedure

There was no general cross-examination of the local planning authority's witnesses on the lines indicated in Ministry Circular No. 95.[3] After the Town Clerk's opening statement and his general examination-in-chief of his witness, the first of the counsel for the objectors cross-examined the City Planning Officer in relation to the particular objections for which he appeared, and then addressed the Inspector. Other representatives for the objectors then followed suit, the Planning Officer being recalled by each for cross-examination, followed by any re-examination by the Town Clerk. Certain of the objectors also called their own witnesses for examination and cross-examination before addressing the Inspector.

The Town Clerk at one stage protested that this procedure did not give him a proper opportunity to present his case in relation to an objection, as his examination-in-chief of his witness had to precede any presentation of the case for an objector, and any address by himself in relation to an objection preceded the address by the objector's representative. It was pointed out, however, that the Town Clerk had a right to re-examine his witness as to any matter raised by the objector on the cross-examination, and a right of general reply after all the objections had been heard.

More than one representative for objectors disagreed with the attitude of the Corporation that the onus of proof was on the objectors to establish their objections. It was suggested that anyone would recognise that proper planning was necessary, but whether a particular plan was the best possible one was always a debatable question, and it was for those who brought forward a plan to justify its provisions.

Use by local authority of unofficial map of proposals

One of the solicitors objecting to the plan made a strong protest against the use which the Corporation had been making of a map which was not one of the development plan maps, and which indicated certain intentions and proposals of the Corporation additional to those indicated in the development plan. It had been the Corporation's practice to disclose this map to intending purchasers of land in answer to the usual inquiries on search, and it was protested that this practice was

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[3] See the *Encyclopædia of Planning, Compulsory Purchase and Compensation*, Vol. 1, Part IV, at p. 1452.

improper and led to the sterilisation of land although not affected in any way by the development plan.

The Town Clerk replied that it had been felt to be desirable to give intending purchasers of land notice of the Corporation's intentions even where these were not included in the development plan.

The Inspector remarked that this seemed to be a matter of the Council's domestic policy, and not really related to any objection to the development plan.

Statutory Instruments

The Lands Tribunal (Statutory Undertakers Compensation Jurisdiction) Order, 1952

(S.I. 1952, No. 161)

Made - - - - *January* 30, 1952
Laid before Parliament *January* 31, 1952
Coming into Operation *February* 1, 1952

[*Summarised*]

This Order in Council, which is made under s. 4 of the Lands Tribunal Act, 1949, transfers to the Lands Tribunal the jurisdiction at present exercisable by a special tribunal constituted in accordance with Sched. IV to the Town and Country Planning Act, 1944. The jurisdiction of that tribunal, which has never in fact been set up, covers disputes about the compensation payable to statutory undertakers on the compulsory purchase of, or the imposition of restrictions on the use of, their land. Disputes about the compensation payable in similar circumstances to the National Coal Board are also referable to the tribunal by virtue of the Town and Country Planning (National Coal Board) Regulations, 1951.[1]

The transfer of this jurisdiction to the Lands Tribunal is provided for in art. 3. The remaining articles make minor and consequential amendments to the Lands Tribunal Rules, 1949, which form the general code governing the work of the Lands Tribunal. In particular, art. 6 provides for the appointment of persons with special qualifications to hear all cases which come before the Lands Tribunal in pursuance of this Order.

The Restriction of Ribbon Development (Temporary Development) (End of War Period) Order, 1952

(S.I. 1952, No. 167)

Made - - - - *January* 30, 1952

[*Summarised*]

By virtue of regulations made, as respects England, under s. 76 (6) of the Town and Country Planning Act, 1947, and, as respects Scotland under s. 73 (6) of the Town and Country Planning (Scotland) Act, 1947, temporary development which,

[1] S.I. 1951, No. 716. See [1951] J.P.L. 340.

by virtue of the Restriction of Ribbon Development (Temporary Development) Act, 1943, was exempted from enforcement action under the Restriction of Ribbon Development Act, 1935, during the war period as defined by the said Act of 1943 is treated as if it were the subject of planning permission granted for a limited period.

This Order in Council terminates that limited period for the purposes of those provisions, and as from the date specified in this Order development so exempted becomes liable to enforcement action, as respects England, under s. 23 as applied by s. 76 (2) of the Town and Country Planning Act, 1947.

The Local Government (Sinking Funds, Amendment of Rate of Accumulations) Regulations, 1952

(S.I. 1952, No. 215)

The Local Authorities Stock (Sinking Funds, Amendment of Rate of Accumulations) Order, 1952

(S.I. 1952, No. 217)

Made - - - - *February* 5, 1952
Coming into Operation - *April* 1, 1952

[*Summarised*]

These two statutory instruments provide that where local authorities maintain sinking funds for the repayment of moneys borrowed on mortgage, or for the redemption or purchase of stock issued by them, by making equal annual payments with accumulations of interest, the rate of the accumulations shall be increased from $2\frac{1}{2}$ to 3 per cent.

Treasury Minute, dated 8th February, 1952, fixing Rates of Interest on Local Loans

(S.I. 1952, No. 273)

Made - - - - *February* 8, 1952
Coming into Operation *February* 9, 1952

[*Summarised*]

This Treasury Minute increases the rate of interest on money borrowed by local authorities, to the following rates :

loans for not more than 5 years $2\frac{3}{4}$ per cent.; loans for more than 5 but not more than 15 years, $3\frac{3}{4}$ per cent.; loans for more than 15 years, $4\frac{1}{4}$ per cent.

The Acquisition of Land (Rate of Interest on Entry) Regulations, 1952

(S.I. 1952, No. 411)

Made - - - - -	*March* 3, 1952
Laid before Parliament -	*March* 4, 1952
Coming into Operation -	*March* 5, 1952

The Treasury in exercise of the powers conferred upon them by s. 57 of the Town and Country Planning Act, 1947 (hereinafter referred to as "the Act") hereby make the following Regulations.

1. The rate of interest for any period after the date on which these Regulations come into force on compensation which fell, or falls, in default of agreement, to be ascertained in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919 (whether as originally enacted or as amended by any subsequent enactment including the Act) in respect of land compulsorily purchased on which entry has been made before the payment of compensation shall, in lieu of being the rate of three and a half per cent. prescribed by the Acquisition of Land (Rate of Interest on Entry) Regulations, 1947, be the rate of four and a half per cent. per annum.

2. The Acquisition of Land (Rate of Interest on Entry) Regulations, 1947, are hereby revoked.

3.—(1) These Regulations may be cited as the Acquisition of Land (Rate of Interest on Entry) Regulations, 1952, and shall come into force on the fifth day of March, 1952.

(2) The Interpretation Act, 1889, applies to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

Parliamentary Intelligence

Amendment of the Act of 1947

During the course of a debate in the House of Lords on the housing situation on February 26, 1952, Lord Lloyd, Lord-in-Waiting, stated that the Government were considering whether the parts of the Act of 1947 relating to compensation, appreciation of land values, and development charges should be modified or altered, but there was no prospect of any amending legislation being introduced in this session. (February 26, 1952. H.L. Debates, Vol. 175, col. 288).

Town Development Bill

A debate on the Town Development Bill took place in the House of Commons on February 25, 1952. (H.C. Debates, Vol. 496, cols. 725, 842, 852.)

In moving the Second Reading, *the Minister of Housing and Local Government* (*Mr. H. Macmillan*) said that in order to prevent great cities expanding into the countryside, and to provide green belts, negative planning control was not sufficient. There were two main methods of positive action—the creation of new towns, a number of which were now well under way, and the expansion of existing towns, to which an impetus should now be given.

The Bill was founded on the principle that there should be not merely an "exporting" of population from an overcrowded town, but that industry should be taken with it or fresh industry attracted. The purpose was that large cities should provide for their surplus populations by orderly and friendly arrangements with neighbouring authorities, who would build up their own areas.

Normally, the "exporting" authority would be a county borough council and the "receiving" authority would be a district council for a district not necessarily contiguous with or near the county borough. The county council for the county of the receiving district would be responsible for planning the areas to be expanded, and would for the first time have housing powers. The central government would stand some of the financial burden in the early stages—the cost of acquiring land, preparing sites, providing water supply and sewerage, and in certain cases of building houses.

Contributions would not be made in respect of movements which were wholly within one administrative county.

Mr. H. Dalton acknowledged that the Bill had taken shape during the term of office of the previous Government, when he was the Minister.

A debate of considerable length ensued.

Bill read a Second Time.

Licensed Premises in New Towns Bill

A debate on this Bill of considerable length took place in the House of Commons on February 27, 1952. (H.C. Debates, Vol. 496, col. 1157.)

After a Division, *Bill read a Second Time.*

New Towns Bill

This Bill received its first Reading in the House of Commons on February 26, 1952. (H.C. Debates, Vol. 496, col. 950).

The Bill proposes to increase from £50 million to £100 million the aggregate amount of advances which may be made to the New Towns development corporations. Expenditure amounting to about £42 million, mainly for housing, has already been approved, and it is estimated that the increase provided for in the Bill will be sufficient for about two years.

Registration of Title in Surrey

The Registration of Title (Surrey) Order, 1952 (S.I. 1952, No. 395) the object of which is to extend the compulsory registration of title of land to Surrey, was approved by the House of Commons on February 25, 1952. (H.C. Debates, Vol. 496, col. 898.) The Order had previously been approved by the House of Lords, and it came into operation on March 15, 1952.

Replies to Questions in the House of Commons

Rentals and Development Charges in Redevelopment Areas

In a written reply to Mr. Baker White, who suggested that certain local authorities, when assessing rents for land in a redevelopment area which they had acquired, took into account the fact that they could make a building licence immediately available, whereas no account of that factor was taken in assessing compensation upon the compulsory purchase of the land,

the Minister of Housing and Local Government (Mr. H. Macmillan) said he would look into any cases referred to him. (February 4, 1952. H.C. Debates, Vol. 495, col. *100*.)

Claims for loss of Development Value

In a written reply to Mr. W. F. Deedes, the Chancellor of the Exchequer (Mr. Butler) said that the probable total of claims for loss of development value under the Act of 1947 should be in the region of £345 to £350 million. It seemed probable that the near ripe classes of claimants, together with some other groups which had been led to expect preferential treatment, would not absorb more than about £100 million. If that proved to be the case, it would leave about £200 million available against the remaining claims of £245 to £250 million. (February 26, 1952. H.C. Debates, Vol. 496, col. *120*.)

Restoration of Gravel Pits

In reply to Mr. Nabarro, who asked what steps are being taken to require proper restoration of agricultural land used for sand and gravel pit working, Mr. Macmillan said that planning authorities can insist on restoration when giving permission for pits to be worked, but as a rule this is considered reasonable only if suitable filling material is vailable. (February 26, 1952. H.C. Debates, Vol. 496, col. 941.)

Attendance of Land Commissioners at Inquiries

In a written reply to Mr. Walker-Smith, Sir T. Dugdale stated that no specific directions had been given to Ministry of Agriculture Land Commissioners about attending town planning inquiries, but the Commissioners were aware that it was not the normal practice for representatives of one Government Department to attend to give evidence at an inquiry held by another Department. (February 28, 1952. H.C. Debates, Vol. 496, col. *173*.)

Development Plans (Military Information)

In reply to Brigadier Medlicott, Mr. Macmillan said that measures had been taken, in consultation with the Defence Departments, to ensure that development plans do not contain matter which ought not to be disclosed for security reasons. (March 4, 1952. H.C. Debates, Vol. 497, col. 182.)

Ministerial Information and Circulars

Tree Preservation Orders

In Ministry Circular No. 20/52, dated February 15, 1952, the Minister of Housing and Local Government refers to Circular No. 60/51,[1] and states that it has been represented that in order to enable local planning authorities to deal with applications notified to them by Conservators under s. 13 (2) of the Forestry Act, 1951, within the time limit prescribed by para. 13 (1) of the Forestry (Felling of Trees) Regulations, 1951, it is essential that they should be informed of such applications as soon as possible after their receipt by the Conservator. The following arrangements have accordingly been agreed with the Forestry Commission.

On receipt by the Conservator of an application to fell trees to which a tree preservation order applies, a copy of the application will be sent at once to the authority who made the order, with a note explaining that it has been sent for information only. The Conservator will consider the application as quickly as possible, and if he considers that a licence ought to be granted, he will inform the authority without delay. This will be done informally at this stage, in such terms as the following:

> "Preliminary consideration of Application No. a copy of which was sent to you on indicates that it may be desirable to grant a licence to fell on the following conditions . If further examination of the Application confirms this, I propose to issue a formal notice under s. 13 (2) of the Act on .

The date inserted in the notice will be a date not earlier than three weeks from the date of receipt of the application by the Conservator. If the Conservator decides that the application ought to be refused he will let the authority know as soon as possible, so as to save their making needless inquiries.

On receipt of the application, the authority who made the order should consider what action they should take if the Conservator gives notice of his intention to grant a licence and

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[1] See [1951] J.P.L. 656.

arrange for early reference to the planning committee if necessary, so that they will be able to deal promptly with the formal notice when received.

MINISTRY OF HOUSING AND LOCAL GOVERNMENT CIRCULARS

[*Continued from p. 94, ante*]

Circular No. 12/52, dated February 12, 1952. Variation of Rates of Interest. [2d.]

Circular No. 20/52, dated February 15, 1952. Tree Preservation Orders.

Notes of Cases [1]

House of Lords

Compulsory Purchase by Central Land Board

Earl Fitzwilliam's Wentworth Estates Co. v. The Minister of Housing and Local Government [2] (February 25, 1952). This was an appeal against the decision of the Court of Appeal,[3] Denning L.J. dissenting, who had upheld a decision of Birkett J,.[4] and decided that the Central Land Board had power under s. 43 of the Act of 1947 compulsorily to acquire a plot of land at existing use value with a view to resale to a prospective developer, in order to further their policy of securing that land should change hands only at existing use value.

The House of Lords (Lords Porter, Goddard, Oaksey, MacDermott and Tucker) dismissed the appeal.

Lord Porter said that the question was whether, on the true interpretation of s. 43, and in the circumstances, the Board validly made the order. The Board said that their action was taken in exact accordance with the terms of the Act—namely, for the purpose of disposing of the land for development for which permission had been granted.

The appellants contended that the order had been made by the Board for a collateral purpose—to enforce their policy of preventing sales at more than existing use value where the buyer was left to pay the development charge. If those contentions were to succeed it must be inferred that the Board did not concern themselves with the particular facts of the case but were minded to carry out a policy which they had adopted whatever the circumstances, but there was no evidence to that effect.

The appellants had also said that the functions of the Board were financial and their only task was to determine the

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[1] Full reports of these cases will be published in *Planning and Compensation Reports*.

[2] Counsel: *J. E. S. Simon, Q.C.* and *J. Harcourt Barrington*, instructed by Warren, Murton & Co. for Newman & Bond, Barnsley, for the company; *Sir Hartley Shawcross, Q.C., J. P. Ashworth* and *R. J. Parker*, instructed by the Treasury Solicitor.

[3] (1951) 1 P. & C.R. 429; noted [1951] J.P.L. 296.

[4] (1950) 1 P. & C.R. 169; noted [1950] J.P.L. 694.

sums payable as development charges and to collect them. But the Board were also empowered by the Act to take over land. Jurisdiction to take over land, given, as it was, in direct terms, must be connected with some of the Board's functions; the natural explanation was that it was given to enable them to perform their functions as assessors and collectors of the development charge.

Lord Goddard said that one of the duties of the Board was to collect the development charge, where permission to develop had been granted. If permission had been given to develop land which it was in the public interest should be developed, and a landowner was unwilling to sell at the existing use value, it followed that the Board would be unable to collect the development charge which would otherwise become payable. It appeared, therefore, that Parliament intended to give the Board power compulsorily to acquire land to dispose of it to a purchaser who was willing to carry out the development.

The other noble and learned Lords agreed that the appeal should be dismissed.

Appeal dismissed.

Court of Appeal

Validity of Enforcement Notice—Notice Not Separately Specifying Period After which to Take Effect

Burgess v. Jarvis and Sevenoaks R.D.C.[5] (February 19, 1952). This was an appeal against a judgment of Parker J., granting an injunction restraining the owner of a house from demolishing it.

The appellant, Jarvis, had built 16 houses at Kemsing, Kent, in 1936, without interim development permission. In May, 1951—shortly before the expiration of the three-year period in the proviso to s. 75 (1) of the Act of 1947—the Sevenoaks Rural District Council served an enforcement notice requiring him to demolish the houses. In the meantime all the houses had been let, and upon receiving the enforcement notice the appellant, as landlord, notified the

[5] Counsel: *Patrick O'Connor*, instructed by Hewitt, Woollacott & Chown, for the appellant, Jarvis; *B. J. M. MacKenna, Q.C.* and *G. R. King Anningson*, instructed by Light & Fulton, for the respondent, Burgess; *Gerald A. Thesiger, Q.C.* and *H. J. Baxter*, instructed by Knocker & Foskett, for the Sevenoaks R. D. C.

tenants of his intention to demolish the houses, although he had no wish to demolish them or to disturb the tenants. Burgess, who was one of the tenants, thereupon applied to the High Court for an injunction and this was granted, restraining the defendant, Jarvis, from demolishing the house, unless an order was made by a court of summary jurisdiction under s. 289 of the Public Health Act, 1936, as applied by s. 24 (5) of the Act of 1947, and reg. 8 of the Town and Country Planning (General) Regulations, 1948 (S.I. 1948, No. 1380), requiring the occupier to permit the execution of the work.

On appeal by the defendant to the Court of Appeal, the Sevenoaks Rural District Council were by agreement and at the suggestion of the court joined as defendants, and the plaintiff was given leave to amend his writ so as to claim a declaration against both defendants that the enforcement notice was invalid.

The Court of Appeal (Somervell and Denning L.JJ., and Roxburgh J.) upheld a submission by counsel for the appellant that as the enforcement notice did not separately specify a period after which it was to take effect, the notice was invalid. It was held that s. 23 of the Act of 1947 requires an enforcement notice to specify two periods, the first being the period at the expiration of which the notice takes effect, and the second the period within which the specified steps for restoring the land must be taken. The second period does not start until the first period has expired and the notice has taken effect. In this case the notice did not specify the date on which it was to take effect, and it was accordingly invalid.

Appeal allowed, and order of Parker J. varied accordingly. Leave to appeal to the House of Lords granted.

South London Sessions

Validity of Enforcement Notice—Notice Not Separately Specifying Period After which to Take Effect

In **London County Council v. Cole** [6] (February 28, 1952) the respondent county council had served on the appellant, the owner of certain land at Woolwich, an enforcement notice

[6] Counsel: *J. P. Widgery*, instructed by Stafford Clark & Co., for the appellant; *Wm. Scrivens*, instructed by the Solicitor of the London County Council.

requiring him to discontinue the use of that land as a zoo after a date stated in the notice. The use had been commenced in contravention of previous planning control and the enforcement notice was served before July 1, 1951.

The notice did not separately specify any period after which it was to take effect, but the owner had not appealed against the notice, and on a summons for failing to comply with the requirements of the notice, the metropolitan magistrate found the case proved and imposed a fine under s. 24 (3) of the Act of 1947. The appellant appealed against the conviction on the ground that the notice was invalid and of no effect for the reason that it failed to specify a period after which it was to take effect, in accordance with s. 23 (3).

On the hearing of the appeal by the County of London Sessions, counsel for the respondent county council referred to the recent decision of the Court of Appeal in *Burgess* v. *Jarvis* (1952) (noted *supra*), but pointed out that this did not overrule the decision of the Divisional Court of the King's Bench Division on the appeal in *Perrins* v. *Perrins* (1951) 1 P. & C.R. 457, which was an appeal in a criminal cause. He referred to the statement by Lord Goddard C.J. in that case, that "It is not for the justices, when a person is prosecuted for the offence of contravening an enforcement notice which has not been appealed, to go into the question whether the notice was a good or a bad one: it has become effective, and, once it is effective, it is the duty of the person who has had the opportunity of appealing against it, and has not appealed, to abide by it."

It was submitted by counsel for the appellant that *Perrins* v. *Perrins* could be distinguished since in that case the court was concerned with matters which could have been the subject of an appeal against the notice, but that the jurisdiction of the court of summary jurisdiction on an appeal under s. 23 (4) did not extend to quashing an enforcement notice because it was defective in form.

Counsel for the respondent county council further referred to *D'Alessio* v. *Enfield Urban District Council* (1951) 2 P. & C.R. 166, in which the Divisional Court of the King's Bench Division had remitted the case to the magistrates with an intimation that they should set aside the notice because of defect in form.

The court (Laurence Vine, Esq.) dismissed the appeal with 20 guineas costs.

High Court—Chancery Division

Effect of Compulsory Purchase on Contract for Sale of Land

Hillingdon Estates Co. v. Stonefield Estates, Ltd. [7] (March 14, 1952). In January, 1938, the plaintiffs agreed to purchase from the defendants certain land at Ruislip, Middlesex, and to take up the land in three portions on January 31, 1938, July 31, 1938, and January 31, 1939, respectively, on payment in each instance of an apportioned part of the total price, with interest. There had been no completion in respect of the third portion when on October 11, 1948, the Middlesex County Council made a compulsory purchase order in respect of, *inter alia*, this part of the land. Notice to treat was served on both parties on July 14, 1949.

The plaintiffs claimed a declaration that they were discharged from further liability to perform any of their obligations under the contract. The defendants counterclaimed for specific performance.

It was contended for the plaintiffs (1) that as a result of the notice to treat the defendants could only convey the property subject to what in effect was a contract of sale to the local authority; (2) accordingly, that the vendors could not convey free from incumbrances and under the doctrine of frustration both parties were discharged from further liability under the agreement.

It was submitted for the defendants that there was no breach of contract or frustration, and no incumbrance within the meaning of the rule.

Vaisey J. said that the doctrine of frustration did not normally operate in a contract for the sale of land. The purchaser became in equity the owner of the land, subject to his obligation to pay the purchase money, and he was the person affected by the compulsory purchase order. The order did not alter the situation in such a fundamental way that the whole contract was frustrated, and there could be completion by conveyance of the land, subject to the order.

The court gave judgment for the defendants with costs, saying that the defendants would have no interest in the compensation for the compulsory purchase.

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[7] Counsel: *Raymond Jennings, Q.C.* and *M. Gravenor Hewins*, instructed by W. F. Foster Hedge & Clare, for the plaintiffs; *D. A. Scott Cairns, Q.C.* and *John Bowyer*, instructed by Howard Kennedy & Co., for the defendants.

Lands Tribunal Decisions[1]

Compensation for Compulsory Purchase

Adams v. Bristol Corporation [2] (Ref./36/1951; November 7, 8, 1951, and February 11, 1952). This was a claim for compensation upon the compulsory purchase of the leasehold interest in shop premises in Bristol, being the remainder of a term of 99 years from June 24, 1933, under a building lease at a rental of £1,700 p.a. The premises erected under the building agreement had been leased for a term of 80 years from September 29, 1933, at a rental of £3,500 p.a., but this lease had been disclaimed in 1941 following war damage to the premises in November, 1940.

The land had been included in an area designated as subject to compulsory acquisition by a declaratory order under s. 1 of the Act of 1944, and following refusal of planning permission for the reinstatement of the buildings, a purchase notice was served and confirmed, notice to treat being deemed to be served on August 19, 1950.

The appropriate payment in respect of the war damage was a cost of works payment, and the parties agreed that the compensation should be the market value of the premises as if the whole of the war damage had been made good at the date of notice to treat, subject to the notional lease provisions of s. 52 of the Act of 1947, but on the assumption that the Corporation's scheme for developing another part of Bristol as a shopping precinct instead of allowing the redevelopment for shopping purposes of this part, which had formerly been one of the main shopping thoroughfares, did not exist.

Two eminent valuers called for the claimant valued the interest at £85,000 (based on a rental value of £7,000) and £87,275 (on rental value £7,250), respectively. The District Valuer submitted a valuation of £63,300 (based on £5,105 rental value).

The Tribunal (JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.) after a detailed comparison of the valuations adopted a figure of £6,800 as net rental value. After deducting the ground rent of £1,700 this was capitalised at 17 years purchase to give £86,700. Allowing for the notional lease, the compensation

[1] Full reports of these cases will be published in *Planning and Compensation Reports*.

[2] Counsel: *J. Ramsay Willis*, instructed by Burges, Salmon & Co., for the claimant; Mr. C. N. S. Nicholson, Solicitor, for the Town Clerk, Bristol, for the acquiring authority.

was determined to be £80,000, the acquiring authority to pay the claimant's costs on the High Court scale.

Vessell Estate Trustees v. London County Council [3] (Ref. /12/1951; February 22, 1952). This was a claim for compensation for the compulsory purchase of a house at Edge Street, Kensington, London. Notice to treat was dated April 1, 1939. If on that date the property was subject to a statutory tenancy, the parties agreed that the compensation should be £650. If it could and would have been offered with vacant possession, the claimants claimed £1,800 and the acquiring authority offered £757.

The property was part of an estate of which the trustees were a Mr. Head and his daughter Miss Head, and Mr. Head had himself obtained possession and lived in the premises from 1936 to the present time. On the date of the notice to treat he was still a trustee although at a later date his appointment as such was revoked.

The Tribunal (J. P. C. Done, Esq., F.R.I.C.S.) held that having regard to Mr. Head's position as trustee, and since the consent of all the beneficiaries to his tenancy had not been obtained, the property must be valued as if vacant possession would have been given. Having regard to the size and arrangement of the property, and to the rentals of comparable properties, the Tribunal accepted the authority's figure of £100 p.a. rental after an expenditure on improvements of £408 (and fees £24, and loss of rent £25) rather than the claimant's figure of £150 p.a. for such a rental. On this basis, but not deducting anything for speculator's profit since a case of this kind would attract a purchaser concerned with occupation of a specific property, the Tribunal assessed the compensation at £975.

Cubitt Estates, Ltd. v. Westminster Corporation [4] (Ref. /26/1951; February 22, 1952). This was a claim for compensation for the compulsory purchase of a dock, with offices, storage buildings, pumphouse, barrelling shed, loading platforms, and a number of storage tanks for petrol and oil, at Grosvenor Road, Westminster. Notice to treat was served on December 20, 1948.

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[3] Counsel: *Ronald Bernstein*, instructed by Ludlow, Head & Walter, for the claimants: *L. A. Blundell*, instructed by the Solicitor to the London County Council.

[4] Counsel: *J. Ramsay Willis*, instructed by Warrens, London; *G. D. Squibb*, instructed by Allen & Son, London.

The Tribunal (JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.) found that the premises had been used for the storage and distribution of petroleum until May, 1932. Between 1932 and 1938 they had been used for the storage of machinery and equipment connected with the operational working of the premises, and were then unused until December, 1939. The London County Council had then taken a yearly tenancy and used the premises as a civil defence training and storage depot until December, 1941, when the Westminster Corporation had taken over the tenancy and used the property for similar purposes until March, 1947. From that date until after December 20, 1948, the premises had not, except for two days, been used for any purpose.

The premises had first become subject to planning control under the Act of 1932, on May 27, 1935, and no interim development permission had been obtained for any of the uses to which the property had been put since that date.

The Tribunal held that as the premises were not being used for any purpose on July 1, 1948, para. (*a*) of s. 12 (5) of the Act of 1947 did not apply.

Para. (*c*) of s. 12 (5) applies where land was unoccupied on the appointed day, and, provided it has not been unoccupied since January 7, 1937, provides that planning permission is not required in respect of use for its last use, taking no account of any use begun in contravention of previous planning control within the meaning of s. 75 (9). In this case, since no interim development permission had been obtained, all the uses since 1935 were in contravention of previous planning control, notwithstanding that prior to the passing of the Town and Country Planning Act, 1944, there may have been no obligation for an interim development authority to obtain permission for development which they themselves proposed to carry out. It was therefore necessary to assume that a purchaser could have used the premises free of development charge, for the purpose for which it had been used before 1935.

On this basis the parties had agreed a valuation of £19,500, and the Tribunal assessed the compensation at that figure, the claimants' costs to be paid by the acquiring authority.

Perry v. Cornwall County Council [5] (Ref./33/1951; February 22, 1952). This was a reference for the determination of the compensation for the compulsory purchase of 2.109 acres

[5] Appearance: Mr. C. W. Done, Solicitor, for the County Council of Cornwall.

of agricultural land with 12 derelict cottages thereon, at Menhay, Cornwall. Notice to treat was dated March 7, 1951.

The County Land Agent valued the land at £131 17s. 6d., based on a rental value of £4 10s., but the Tribunal (JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.) adopted a rental value of £6, at which it was in fact let to a neighbouring farmer, and assessed the compensation at £170.

As the owner had made no effort to facilitate the settlement of the amount of compensation, and had caused expense and waste of time, he was ordered to pay 10 guineas costs.

Claims for Loss of Development Value

Birrell v. Central Land Board (Ref. CLB/390/1951, March 5, 1952). This was an appeal against a determination by the Central Land Board that there was no development value in the appellant's freehold interest in a house at Watford.

The appellant claimed that the restricted value was £1,500 and the unrestricted value, based on use of the house as a shop or office with flat over, was £2,800.

The Tribunal (CECIL H. BAILEY, ESQ., B.SC., M.I.C.E., F.R.I.C.S.) held that on evidence of sales between 1946 and 1948 of other houses in the same road, for residential purposes, at an average price of £2,600, there was no difference between the unrestricted and restricted values of these premises. Further, having regard to the situation of the house, the possibility of its use for business purposes was on the appointed day too remote to add anything to its value.

Appeal dismissed with costs on County Court Scale 3.

Davey v. Central Land Board (Ref. CLB/483/1951, March 5, 1952). This was an appeal against a determination by the Central Land Board that there was no development value in the appellant's freehold interest in an old-fashioned semi-detached house with quarter-acre garden, at Greenwich, London, S.E.7, occupied as three maisonettes.

The appellant claimed that the restricted value was £2,000, and the unrestricted value £3,189, based on the possibility of this and other neighbouring houses with an excessive amount of land being redeveloped at a higher population density by the local authority or by a joint scheme promoted by the owners.

The Tribunal (CECIL H. BAILEY, ESQ., B.SC., M.I.C.E., F.R.I.C.S.) ruled out a further suggestion made by the appellant

that there was loss of development value from the possibility of enlarging the building on its present site, since it was necessary that there should have been some definite and particular proposal in relation to the premises.

With regard to the possibility of redevelopment, there was no concrete proposal of any kind on the appointed day, and having regard to the difficulties and obstacles in relation to such development, the Tribunal concluded that at the appointed day no willing purchaser would have paid more for the property than its existing use value.

Appeal dismissed, with costs on County Court Scale 3.

Atlas Assurance Co., Ltd. v. Central Land Board [6] (Ref./750/1951, March 5, 1952). This was an appeal against a determination by the Central Land Board that there was no development value in the freehold interest in premises at Leeds, which had been used as a warehouse until October, 1940, and then requisitioned and used as offices. An operative planning scheme had come into force in June, 1939, and under that scheme the change of use was permitted, without planning consent.

The Tribunal (Sir Wm. Fitzerald, Q.C., and Erskine Simes, Esq., Q.C.) rejected a contention for the appellants that under ss. 61 and 89 of the Act of 1947 in the case of requisitioned land it was necessary for the purposes of Part VI valuations to look at the use of the premises immediately before the date of requisition. The words in s. 89 (1) " in the state in which it was immediately before the beginning of the period of requisition " referred only to the physical state of the land and not also to the use to which it was put.

A further contention that the " requisitioned use " at the appointed day was not the " permitted use," was also not accepted in view of the terms of the operative scheme, and the Tribunal also rejected a contention that the office use was a temporary use under s. 12 (5) of the Act of 1947, or that if so, that this would preclude a continuance of the temporary use.

It followed that it was necessary to calculate the restricted value on the assumption that the office use was a use in respect of which planning permission was unnecessary.

Appeal dismissed, with two guineas costs.

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[6] Counsel: *D. Walker-Smith*, instructed by Hudson, Matthews & Co., for the appellants; *C. J. Highton*, of the Treasury Solicitor's Department, for the Central Land Board.

*Notes of Planning Decisions**

Discontinuance Order—Use of land and shed for storage, cutting, and sale of timber

The following is an extract from the letter of the Minister of Housing and Local Government, dated January 30, 1952, notifying his decision on an application for the confirmation of an Order made under s. 26 of the Act of 1947, requiring the discontinuance of the use of certain land and the shed erected thereon at Bricket Wood, St. Albans, for the purpose (i) storage of timber; (ii) the cutting of timber; and (iii) the sale of timber.

"He is in complete agreement with your Council that the amenities of a residential neighbourhood should be protected against the activities of industry but he thinks that a stronger case is needed to justify action to bring about the discontinuance of a use than would be needed to warrant a refusal of permission in the first instance. He notes in this particular case that the circular saw in question is generally operated for periods of four hours a day on three days a week and mostly during the winter months; moreover it appears to him that a main cause of complaint is that of noise arising from a mechanical defect in the driving unit. The owner has undertaken to make every effort to reduce this noise, but in any case the Minister is of the opinion that other and more appropriate powers are available to your council for controlling any nuisance that may thereby be caused.

"In the circumstances the Minister is satisfied that the restricted use of the site is not sufficiently objectionable as to justify enforcement proceedings. He has accordingly decided not to confirm the Order."

[By courtesy of Messrs. Claude Barker & Partners, Solicitors, Watford.]

Erection of pre-fabricated bungalow on waste land in residential district

The following is an extract from the letter of the Minister of Housing and Local Government, dated January 25, 1952,

* The Managing Editor desires to express his thanks to those who have been kind enough to send to this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

conditionally allowing an appeal against the refusal of Hampshire County Council to grant planning permission for the erection of a pre-fabricated bungalow on land at Southwood Road, Eastoke, Hayling Island.

"Mr. Pendry owns a piece of land extending between Southwood Road and the beach and has planning permission to erect houses but is unable at present to get a building licence. His proposal is to erect a pre-fabricated bungalow, measuring 35ft. by 20ft., on a plot with a width of 60ft. Permission was refused on the ground that this would be injurious to the amenities of neighbouring residential property.

"The Minister appreciates the council's wish to maintain a high standard of development in this popular seaside resort but is of the opinion that there is advantage in putting vacant land of this kind, which would otherwise be wasted and tend to become untidy, to some reasonably satisfactory temporary use until a more permanent form of development is practicable. He is informed that there is a sewer in Southwood Road and that mains water is available. In all the circumstances he has come to the conclusion that this unpretentious but quite seemly pre-fabricated bungalow may be allowed temporarily and he has decided accordingly to allow the appeal to the extent that he grants permission for the development shown in the submitted plan for a period of seven years from the date of this letter subject to the condition that the external finish of the bungalow and the sanitary arrangements shall be agreed with the local planning authority or, in default of agreement, approved by the Minister."

[By courtesy of the clerk to the Havant and Waterloo Area Development Sub-Committee.]

Erection of cottages and flats in Green Belt

The following is an extract from the letter of the Minister of Housing and Local Government, dated February 4, 1952, allowing an appeal against the refusal of the Hendon Borough Council to consent to the erection of three pairs of cottages or three blocks of two-storey flats on land at Frith Manor Farm, Lullington Garth, N.W.7.

"Frith Manor Farm, comprising some 68 acres, is used by the Express Dairy mainly as a rest home for their horses, and also for the rearing of live stock. About one-third of the land is under cultivation. In 1947–1948, three pairs of semi-detached cottages were erected on land immediately adjoining the appeal site, and the services then provided envisaged

further dwellings as now proposed. The present proposal completes the appellants' intentions as regards residential development at the farm. The dwellings would be occupied by members of the firm's staff, although not necessarily employed at the farm.

" The appeal site is the undeveloped part of a triangular piece of land which is otherwise occupied by the farm house and other buildings and can well be regarded as the natural completion of this group. The Minister does not think therefore that residential development on the small sloping field of the appeal site would be inappropriate nor that it would result in any significant incursion on green belt land.

" The Minister has accordingly decided to allow the appeal and he hereby grants permission for the erection of three pairs of cottages or three blocks of two-storey flats, subject to the condition that the siting, design and external appearance of the dwellings shall be as may be agreed with the local planning authority or in default of agreement as shall be determined by the Minister."

[By courtesy of the Town Clerk, Hendon.]

Erection of dwelling-houses and garages on land required for educational purposes

The following is an extract from the letter of the Minister of Housing and Local Government, dated December 3, 1951, allowing an appeal against the refusal of the Barnet Urban District Council to permit the erection of three detached dwelling-houses and garages on land on the north side of Laurel Way, Totteridge N.20.

" Your council's reason for refusing consent was that the site with adjacent land is required for educational purposes.

" The Minister has consulted the Minister of Education who after full consideration of the facts of the case and in particular, having regard to the small area of land involved, about .39 of an acre, is satisfied that the use of the site for houses would not seriously interfere with the educational proposals for the adjoining land."

[By courtesy of the County Planning Officer, Hertfordshire County Council.]

Correspondence

To the Managing Editor,
Journal of Planning Law.

Sir,

Reflections on Development Plans

May I say very briefly in reply to Mr. Colin Duncan's letter on p. 168 that (as stated on p. 16) a local planning authority repeatedly observed during a recent inquiry that they had not considered the question of cost. They also admitted that the engineering problems and other aspects of the work involved in the proposals had not been considered. They suggested that these were matters which the Engineers, Quantity Surveyors and Valuers of the Ministry could consider. They admitted they proposed to do more in the next five years than they had done in the last 50 years, but just thought they could afford it. The Inspector was satisfied that the inquiry should be proceeded with.

Yours faithfully,

W. A. Leach,

Holborn Bars,
E.C. 1.

To the Managing Editor,
Journal of Planning Law.

Sir,

Reflections on Development Plans

If the Inquiry recently held in this city is any criterion, it would not be advisable for any of your readers who may have to represent objectors to a Development Plan to bank on Circular 97 being of much help in eliciting from a local authority relevant factors as to cost. Your correspondent says that a purist may complain that the Written Analysis is not part of the Development Plan: it was made very clear at the Canterbury inquiry that it was indeed not part of the plan, and that the figures in it are simply produced by applying a set of facts to a formula laid down by the Ministry. In reply to cross-examination the City Architect (to quote from the local paper) answered that the figures in the Written Analysis were not an estimate of the whole scheme but an estimated cost based upon the amount of work which could be done by the labour force available in parity in the conditions before the War and taken over the number of years estimated for the completion of the Scheme. If the Scheme were not completed in that time the matter would have to be reconsidered.

It will thus be seen that this method of costing bears no relation at all to the actual carrying out of the plan nor to such factors as licence availability, public loan interest rates, or the general question of whether the scheme can be paid for.

This is most unsatisfactory, and particularly so in the cases of plans which contain areas designated for compulsory purchase. The answer that "if we cannot do it in 10 years, we will do it in 15" will not suffice in the case of a designated area. It is submitted that the planning authority ought to answer two eminently fair questions.

First, "how are you actually proposing to raise the money to purchase in 10 years the land you have designated?" Secondly, "how are you proposing to finance the development of the land when you have acquired it within such a reasonably short period after acquisition as to make its designation now a proper course?"

Circular No. 97 is of not the slightest help in making local authorities answer either of these two questions.

Yours faithfully,

FIELDING & PEMBROOK.

Burgate,
Canterbury.

TO THE MANAGING EDITOR,
JOURNAL OF PLANNING LAW.

Sir,

Appeal against Refusal of Planning Permission—Local Inquiry

The following points relating to a recent local inquiry in which I appeared for the appellant may be of interest to your readers:—

1. After some discussion, the Inspector agreed to the withdrawal of witnesses from the inquiry until they had given evidence.

2. I arranged for the Vice-Chairman of the Planning Committee to give evidence as to the matter considered by the Committee when the application for planning permission was refused. It seems most important that such evidence should be before the inquiry, for it is the decision of the Planning Committee which causes the appeal to be made. I was able to submit that the Planning Committee did not appear to have considered the application very fully.

3. The notice of refusal issued to the appellant was in the usual brief terms. I suggested that in the future, local authorities would be well advised to set out the grounds for refusal at length in a covering letter.

4. The Council concerned called the usual officials, namely, the Surveyor, Planning Officer, County Planning Officer, etc. These officials produced prepared typed statements which were read and handed in. There is no objection to this course but in one such instance I was able to extract a reply showing that such detailed facts had not been presented to the Planning Committee.

The above points will I trust prove helpful to other solicitors acting for appellants.

Yours faithfully,

C. P. RYLATT.

Haywards Heath.

To the Managing Editor,

Journal of Planning Law.

Sir,

Temporary Buildings—Development Charge

We have recently dealt with the assessment of development charge on the change of use of a building the subject of a temporary life, and we append our conclusions.

Temporary buildings are dealt with for development charge under one of two methods as the developer elects.

Method 1 is that ordinarily applied to assessment of development charge. It probably results in no charge at all for the period of the planning permission, but subsequent permission would attract full development charge as the cost of the building has been used up in arriving at the first determination.

It was realised this would operate harshly on the developer in connection with subsequent planning permissions, and therefore, as an alternative he can elect to be assessed under Method 2:—On the difference between the refusal value and consent value of the land only as opposed to land and buildings, with the guarantee this method will be used if subsequent planning permissions are granted.

This concession is of help to the developer, but in our opinion it does not go far enough. We consider that principles of valuation should apply equally whatever type of valuation one is dealing with, which we submit cannot be the position under the terms of the District Valuer's direction which is to apply the ordinary valuation tables and which, therefore, favours the Central Land Board unjustly as when dealing with short leased or short lived (as in the case of temporary planning permissions) interests short leasehold valuation tables should be used, which result in the case under review of a charge of one-half that arrived at under ordinary valuation tables.

Yours faithfully,

Austin Farr & Co.,

Chartered Auctioneers

and Estate Agents.

Southall.

Practical Points

All questions for consideration should be addressed to "The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of the replies.

355. *Development charge—strip of land adjoining dwelling-house*

A client of ours recently purchased a building plot of land 37 ft. wide, and as the owner of the land had an additional strip he wished to dispose of, between this building plot and the hedge forming the boundary of his estate, our client at the same time also purchased this additional strip of land. The building plot was "dead ripe" land in respect of which a s. 80 certificate had been granted, but the certificate did not cover the additional strip of land at the side. Our client is about to erect a house which is being built entirely on the building plot, and he intends to grow crops on the additional strip of land, for which purpose the land has for many years been used. He has now received notice that the District Valuer has assessed a development charge of £50 in connection with the erection of the house.

Should not the land be free of a development charge?

Our client has not separated his building plot from the additional strip of land, but is willing to do so if this would assist him in getting the development charge waived. [P. & R.]

ANSWER

I think if this additional strip of land will be used as part of the curtilage of a dwelling-house, there will be a change of use amounting to development, in respect of which liability to development charge will attach. Presumably the planning permission obtained for the erection of the house has shown this land as part of the curtilage, and it is on this basis that the District Valuer has assessed the charge. It seems (if this is so) that a fresh application for planning permission excluding this parcel from the curtilage should be made, and the parcel should be physically so excluded by an effective fence

(with, for preference, *no* gate giving access to the garden of the house). [J. F. G.]

356. *Development charge—Use of building in course of erection on appointed day.*

A site not previously used for any but agricultural purposes has had erected thereon a factory. Planning approval and by-law approval were given in April, 1947, and the erection was commenced prior to July 1, 1948, and completed after that date.

Presumably, therefore, no development charge is payable for the erection of the building but what about development charge in respect of change of user? Since the factory was in course of erection on the appointed day it could not then have been in use for the present purpose.

The vendor takes the line that he has had no communication with the Central Land Board, nor is he disposed to do so, and wishes to insert a condition in the contract as follows :—

"The property is sold on the footing that there is no development thereon in contravention of the Town and Country Planning Act, 1947. There is no permitted use under the Act and the factory was in course of construction on July 1, 1948."

Your advice is requested—

(a) as to whether there is a possibility of a development charge being levied for change of use.

(b) if "not," would the purchaser be safe in accepting such a condition in the contract and deleting all reference to the Act of 1947 from his conveyance? [M. D. & B.]

ANSWER

(a) Not in my opinion; by virtue of s. 78 (1) permission is to be deemed to have been granted under Part III of the Act in respect of the completion of these works. This will attract the benefit of s. 18 (3), and the permission will cover also the change of use to the purpose for which the building is designed, and by virtue of s. 78 (3) no development charge is to be payable in respect of that development.

(b) I do not consider the words "there is no permitted use under the Act" should be included in the condition, as it does not seem to be correct in law. I would suggest that unless the vendor agrees to state the use, no reference to the use should be included in the contract or the conveyance. The

parcels in both documents should, however, in my opinion, describe the premises as a "factory." [J. F. G.]

357. *Near ripe land—effect of refusal of planning permission.*

A client of ours, who is a builder, owns about $1\frac{1}{4}$ acres of building land which has been accepted as "near ripe."

Our client's agent has now agreed with the District Valuer that compensation for loss of development value on the land in question should be £760, and that sum comes under the Central Land Board guarantee of payment, and no doubt will be paid in due course.

Our client is very anxious to obtain planning permission to develop this land, but he has heard that it is quite possible that such permission will not be forthcoming for a variety of reasons.

We should, therefore, be glad to know whether, in your opinion, if our client applies for planning permission before he receives his £760 and such permission is refused, he therefore loses his right to the £760, as it might be argued that the land could hardly be described as "near ripe" after the refusal of planning permission. [O. E. & G.]

ANSWER

The claim would not be affected. [W. A. L.]

358. *Planning permission—Condition requiring erection of buildings in the future.*

I have been asked to advise whether it could properly be made a condition of a planning permission for the erection of a factory that an office block should be erected in accordance with plans to be approved within a period of, say, 10 or 15 years from the date of the planning permission, and if so, whether such a condition could be enforced at the expiration of the stated period.

The question arises because my Council have received applications for the erection of buildings which form part only of the development project which the applicants propose to carry out, but in respect of which they are fully aware that at the present time they will not receive a licence. In fact, the applicants seek permission to erect a factory which they propose to set back some considerable distance from the road, in order to leave room for the erection at some future time of an administrative block. So far as the siting of the proposed factory is concerned, no objection

can be taken on planning grounds but the elevation of that factory from the road will not be attractive, a situation which will persist until such time, if at all, the proposed office block is built. At the moment no permission for the office block is sought. [J. L. E.]

ANSWER

I think the form of condition which you suggest is *ultra vires*. The essence of a condition is that it modifies the consent. The proposal is a particular factory building which has no relation to future proposals which themselves require planning consent even though they do happen to be within the same curtilage. It seems quite as relevant to impose a condition that he erect a greenhouse three miles away. To look at it another way, if the condition requires the erection of a building this presupposes planning permission which may in the light of future planning ideas be refused. Again it seems wrong as a mere condition to require the spending of such a large sum of money. [R. P. C.]

359. *Planning permission—rights of landlord and tenant*

Clients of ours have obtained planning permission in perpetuity to change the use of the upper part of their premises from residential to business user and have elected to pay a development charge limited to the duration of their lease.

Assuming our clients vacate the premises, what is the position at the end of the lease when the permitted use cannot be continued without payment of a further development charge and residential use cannot be resumed without planning permission (and also the possible payment of a development charge?). Have our clients any liability to the landlord? [R. B. & P.]

ANSWER

Your client's liability to the landlord is governed by the terms of the lease. If he covenanted to use for residential purposes only and to restore in the same condition, presumably he is liable under the covenants. If the lessor continues the use he is liable for further development charge, but although he requires planning permission if he changes the use to residential use, it is most unlikely that there will be any charge to pay. However, it may be that the area is one in which residential development will not be allowed in future, and the landlord will have to pay a charge for the privilege of using his own property at all. See [1949] J.P.L. 169. [R. P. C.]

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"Planning Law" Notes

Another interesting decision of the Lands Tribunal involving rule (3) of s. 2 of the Acquisition of Land, etc., Act, 1919, is noted in this issue (*post*, p. 287). This rule, which provides that in assessing compensation for compulsory purchase the special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers or for which there is no market apart from the special needs of a particular purchaser or requirements of a public authority, is often a difficult one to apply. It was considered in relation to another Lands Tribunal case at [1951] J.P.L. 447.

Mr. J. K. Boynton writes: At least one county council whose development plan inquiry was completed some months ago are still receiving objections to their development plan. Perhaps this is not surprising when it is recalled that there are no provisions in the Act at all for notifying owners of proposals in the plan which may affect them. An owner must rely for knowledge of the provisions of the plan upon public advertisement and inspection of one of the deposited copies. It would, no doubt, be an enormous undertaking to notify all owners affected, and it might be argued that the need to do so is not great, as the plan itself has no overriding significance, even if it has been approved. There is one exception to this however: s. 45 of the Act makes it possible for the Minister to disregard any objection made to a compulsory purchase order which in the opinion of the Minister amounts in substance to an objection to the provisions of the development plan defining the proposed use of the land. In these cases there is surely something to be said for making it necessary for owners to be notified of the existence of proposals for designating land as subject to compulsory acquisition, even though in practice the owner may often know and, indeed, have been approached by the local planning authority.

Is there not also something to be said for making copies of the draft plan available for sale to the public, as well as copies of the approved plan? It is not always convenient to inspect a deposited copy, particularly where a professional adviser is

acting for an owner with numerous properties. The minimum period for deposit of the plan, *i.e.*, six weeks, is also less than in many other cases where the public's interests are less affected.

A Parliamentary question recently referred to the concern expressed by local authorities at the anticipated lapsing of Defence Regulation 68CA (March 25, 1952, H.C. Debates, vol. 498, col. *38*).

Mr. R. P. Crompton contributes the following note:—

Defence Regulation 68CA

Defence Reg. 68CA is among those regulations continued in force until December 10, 1952, by the Supplies and Services (Continuance) Order, 1951 (No. 2116). Its final inclusion in the Order gives little indication of the long discussion that took place in the House of Commons on November 14, 1951, when it was proposed that Reg. 68CA should lapse. The legal difficulties attached to the repeal and re-enactment of Defence Regulations may not unduly interest readers of this *Journal*, but the reason for the proposed omission will. It was that the regulation, which relates to certain conversions of housing accommodation for non-residential purposes, is covered by the relevant Planning Act. This proposition deserves examination in the light of the debate which followed.

Defence Reg. 68CA provides that it is no longer permissible as from October 30, 1945 (subject to certain exceptions), to use for other purposes any housing accommodation which has since December 31, 1938, been used for residential purposes, unless consent is obtained from the relevant local authority, namely, the local housing authority. This is a provision to safeguard housing accommodation in these days of shortage. The decision is by the local housing authority which, outside the county borough, is a different authority from the local planning authority. At one time appeals against the authority's decision used to go to the Minister of Health, whereas planning appeals went to the Minister of Town and Country Planning. Now the final arbiter is the same in the person of the Minister of Housing and Local Government. One member did raise the point that if the area was zoned for commercial use, the question arose how far on housing as opposed to amenity grounds it could be refused under planning. The decision to allow the regulation to continue for

another year will enable the Minister to obtain the views of the local authorities' associations on the necessity for its continuance.

The only comment that a lawyer can respectfully make is briefly this: "How far does the *ratio decidendi* of *Pilling* v. *Abergele U.D.C.* (1950) 1 P. & C.R. 42, apply?"

Defence Regulation 16

Interesting for another reason was the discussion on Reg. 16 which was continued by the Emergency Laws (Continuance) Order, 1951 (No. 2117), made under the Emergency Laws (Miscellaneous Provisions) Act, 1947, until December 10, 1952.

Reg. 16 provides for the stopping-up or diversion of highways for purposes of open-cast coal and generating stations as follows:—

"The Minister of Fuel and Power, if he considers it necessary to do so for the purpose of working open-cast coal or constructing or extending an electricity generating station, may by order provide for the stopping-up or diversion of any highway passing through, and for prohibiting or restricting the exercise of any right of way over or the use of any waterway passing through, any land used or appropriated for use for that purpose or any land adjoining such land."

In debate it was suggested that adequate powers existed under the old Highways Act and quarter sessions procedure and under s. 49 of the Town and Country Planning Act, 1947. It was also suggested that the Minister of Fuel and Power was not the appropriate Minister to exercise this power. The reply was that the Defence Regulation was necessary because it was speedier than the other procedures. The regulation would not be applied to generating stations but would be necessary in relation to open-cast coalmining.

An outdoor advertising association, in a letter which we publish at *post*, p. 303, joins issue with Mr. Desmond Heap on the question of the functions of the Minister in relation to the control of advertisements. We are hoping that Mr. Heap will be provoked into some further comments for publication in an early issue.

Mr. T. A. Blanco White contributes the following: "The case of *L.C.C.* v. *Cole*, noted at [1952] J.P.L. 231, suggests

that further consideration should be given to the question of enforcement notices which are invalid (under the decision in *Burgess* v. *Jarvis*[1]) because they do not specify separate periods for the notice to come into effect and for action to be taken upon it. The key to this question is supplied by the reasons given for the Court of Appeal's decision in *Burgess* v. *Jarvis*. A majority of the court held the notice concerned invalid because it did not specify the period for the notice to take effect. This being so, either the notice could never come into effect (so that the time for appeal against it could never expire, and further proceedings could never be taken upon it), or else (conceivably) it must have been intended to come into force at once, in which case there would be no possibility of appeal, since no time for appeal is allowed in the notice, and it could never be held against the landowner that he ought to have appealed and did not. Either way, the decision in *Cole's Case* must have been wrong. It is of course possible to imagine a notice which would be invalid because it specified a period for coming into effect but allowed no time thereafter for action to be taken upon it. Such notices ought, no doubt, to be appealed against. But it seems unlikely that there have been many of them.

We are indebted to the County Planning Officer, County of Denbigh, for the correspondence relating to development affecting trunk roads, which we publish at p. 266, *post*. The question as to what conditions may validly be imposed on a grant of planning permission is often one of considerable difficulty. S. 14 contains very wide powers, but there are certain limits, and conditions which the Minister of Transport requires to be imposed in relation to development affecting trunk roads are frequently near the borderline between what is and is not permissible.

The Court of Appeal, by a majority decision, have allowed the appeal in *Marks and Spencer* v. *London County Council and the Central Land Board* (see *post*, p. 285). So far, two judges have decided that the demolition of a building is " works for the . . . erection " of a new building on the site so as to

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[1] Noted *ante*, p. 230; reported [1952] 1 T.L.R. 580; [1952] 1 All E.R. 592.

bring the case within s. 78 of the Act, and two other judges, including the Master of the Rolls, have held to the contrary view. An appeal to the House of Lords is apparently contemplated.

The Court of Appeal unanimously dismissed the Bekonscot appeal and held that all little buildings in the model village erected since the date of the local authority's resolution to prepare a planning scheme in 1929 were subject to an enforcement notice. See *post*, p. 285.

The Minister of Housing and Local Government has approved the proposals for a long-distance footpath along the North Coast of Cornwall. The proposals were submitted by the National Parks Commission in January this year. The path follows the coast from the Cornwall-Devon boundary in the north down to Lands End, and round to Penlee, west of Penzance—mostly along the cliff edge. It will be 135 miles long, and 45 miles of new path will be made by the local authorities.

In the first list of Queen's Counsel to be issued in Her Majesty's reign appears the name of Edward Johnson Rimmer. Mr. Rimmer has been a member of the Editorial Board since the inception of the *Journal of Planning Law* and the series of articles for which he was jointly responsible published in our early issues did much to demonstrate the impact of the new planning law.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the MANAGING EDITOR, *Journal of Planning Law*, 3 CHANCERY LANE, LONDON, W.C.2. ***Every attempt will be made to return drafts or unsuitable copy, but no guarantee can be given in this respect.***

Books for review should be sent to the Publishers at the above address.

Control of Existing Advertisements

By T. A. Blanco White, *Barrister-at-Law*

A difficult point upon the Control of Advertisements Regulations, 1948, has been raised by the March issue of this Journal.[1] The question is this: When a local planning authority wants to bring an existing advertisement under control, the first step is to serve upon "any person displaying" it a notice requiring him to apply for an express consent. By the definition in reg. 2 (2), which follows s. 32 (4) of the Town and Country Planning Act, 1947, most advertisements are deemed to be "displayed" by quite a number of persons. Does the notice have to be served on them all, or will any one of them do? If the latter, can an enforcement notice later be served upon the others, or must it be directed only to those who were required to apply for consent? In particular, must the original notice be served on the owner of the land? And can there be an enforcement notice which is not served on the owner of the land?

Now the first thing to be observed, is that neither in the Act nor the Regulations is it suggested that enforcement procedure against advertisements in general is to be confined to those actually responsible for the offending advertisement. The Act [2] does provide that a person, deemed to be displaying an advertisement without consent, is not guilty of any offence if (and so long as) he is both ignorant and innocent of the display; but there is no implication that an enforcement notice may not be served upon an innocent displayer. On the contrary: there is special provision in reg. 24 (2) for an owner or occupier, put to expense by enforcement proceedings, to recover the expense from "the person who displayed such advertisements" (meaning, presumably, in this instance, the person who actually did). This provision clearly contemplates an innocent owner or occupier, rather than one who conspired with the displayer to commit an offence under s. 32 (3) of the Act. Indeed, the Regulations seem to contemplate, as normal procedure, that the local planning authority should proceed in

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1 See the letter from the Clerk to the County Council of Cornwall, *ante*, p. 169.

2 S. 32 (4) and reg. 9 (2).

the first place against the owner or occupier of the land concerned, without troubling to consider who is actually responsible.

This being so, it is only to be expected that the provisions relating to existing advertisements should be drafted along similar lines. It is hardly surprising, then, that reg. 8 should allow the notice requiring an application for express consent to be served upon any displayer. So far, there is no difficulty. The trouble is, that the " definition " in reg. 2 (2) is somewhat obscure.

That these Regulations are atrociously drafted is painfully clear: see, for instance, the pregnant negative of proviso (*b*) to reg. 7 (6). It may be said that in reg. 2 (2) the draftsman has indicated with his usual clarity what he really meant to say: which was, that when he said " the person displaying an advertisement " he meant the person displaying an advertisement, but that (except in one or two places, and he could not be bothered to look and see which) the various other people mentioned were to count as persons displaying the advertisement, too. What he has actually said (omitting alternatives) is " Reference in these Regulations to the person displaying an advertisement shall be deemed to include the owner and occupier of the land on which the advertisement is displayed, and " Uncle Tom Cobley and all. The question is, when (following this instruction) we read the owner and occupier, etc., into reg. 8, which deals with notices requiring an application to be made for express consent, do the " ands " in the definition turn into " or," or not? It seems that a Cornish bench has said that they do not, so that the notice is invalid unless served on everybody.

It is, of course, unnecessary to explain that the actual words " the person displaying an advertisement " appear to occur nowhere outside the definition clause itself. (The nearest is in reg. 24 (2), where the context seems to exclude the definition.) Some guidance can however be obtained as to what is meant by a " person displaying an advertisement," by considering reg. 23. This provides that " the local planning authority may serve an [enforcement notice] on the owner and occupier of the land, and also on any other person known to the local planning authority to be displaying the advertisement without [the required] consent." This can only mean that the owner, like the occupier, is a person displaying the advertisement: which settles the ambiguity of reg. 2 (2). Nor does it seem reasonable, in the face of reg. 23, that reg. 8 can by mere

implication be intended to say that the notice requiring an application for express consent (unlike a notice under reg. 23) must be served on all the persons within reg. 2 (2) whether known to the local planning authority or not.

It is reasonably clear, then, that reg. 8 means one of two things: either the notice is to be served only on the person actually displaying the advertisement (*i.e.*, reg. 2 (2) does not apply), or it may be served on any one of the persons deemed to be displaying the advertisement.

This does not mean that any local planning authority could be well advised to omit the owner and the occupier from service of the notice. Quite apart from the practical point that it might well give rise to avoidable litigation, it must not be forgotten—see regs. 7 (6), 8 (2)—that existing advertisements have some of the qualities of the hydra. The displayer can be compelled to remove an offending advertisement, but it is by no means clear that the landowner is not then entitled to replace it by another, similar, advertisement so long as he does so immediately. The only way to be sure of stopping this is to serve the reg. 8 notice in respect of " the use of the land for the display of advertisements "—in which case there is no need to specify any particular advertisement, and reg. 2 (2) in any event seems not to apply, with the result that Uncle Tom Cobley is out of it. To be sure, however, of catching the person actually " using " the land, owner, general occupier and actual displayer ought all to be served. (This should not be difficult, since s. 105 of the Act would seem to apply to procedure for service, except possibly in the case of the actual displayer.) Of course, if a notice relating to a specific advertisement does procure its removal and it is not replaced, the reg. 7 (6) consent to the use of the land lapses, for only continued display has the deemed consent. But the safer course, unless it is a particular advertisement that is objected to as distinct from any display on that land, is to proceed against the land as suggested above.

The next question is this: Suppose a defective reg. 8 notice in fact induces someone to apply for express consent, and it is refused, does the defect in the notice matter? The Cornish bench already mentioned seems to have assumed that a defect in the notice requiring express consent to be applied for meant that the deemed consent remained in force, even though an application for express consent was made and determined. In this the bench seems to have been wrong. If a notice purporting to be served under reg. 8 is defective, it may be ignored;

but if an application for consent is made it would seem that the local planning authority can deal with it, either under reg. 7 (4) or under reg. 17 (1). A deemed consent, however, if it is subject to reg. 8 at all, automatically comes to an end (under reg. 5 (2)) as soon as an application for express consent is finally determined, whether notice under reg. 8 has been served or not. In other words, the formal requirements for a notice under reg. 8 are only of importance if all those upon whom the notice is served challenge or ignore it.

The next point to be considered is that reg. 23 (1) itself presents the same difficulty of construction as reg. 8. The words quoted above, " on the owner and occupier of the land and also on any other person known . . . to be displaying the advertisement," present just the same problem: must an enforcement notice be served on everyone, or will (say) service on owner and occupier only do? The same question arises, of course, with " ordinary " enforcement notices, under s. 23 of the 1947 Act, and the advice has usually been given to serve both owner and occupier (the only people mentioned in s. 23) rather than risk invalidity by serving one only. This, however, is easily enough done; while to serve an advertisement-control enforcement notice on Uncle Tom Cobley and all is no doubt the safe course to take, but would often involve a disproportionate expenditure of effort.

What the draftsman meant to say was possibly this: that owner and occupier must both be served, but others could be served, too, if the local planning authority thought fit. If so, he has not said it; the use of the word " any " might suggest that meaning, but the same phrase is used in the alternative meaning of " all (if any) " in reg. 21 (2). Nevertheless, the strict meaning is so unreasonable that a notice served on owners, occupiers and actual displayers should normally be accepted by a court—unless and until the Divisional Court say otherwise. In cases of doubt, or where an appeal on this ground is expected, prosecution (under s. 32 of the Act and reg. 9) may be the simpler remedy: the actual displayer being the primary defendant.

One thing, at least, reg. 23 cannot be made to say: that there can be a known " deemed displayer " upon whom an enforcement notice cannot be served—whether a reg. 8 notice was served on him or not.

One last point. If an enforcement notice is served on two persons, and one only appeals against it, it does not follow that the notice takes effect against the other. If the notice is

quashed by the court that hears the appeal, it is the notice that is quashed, not the service of it upon a particular person. Nor can separate notices be served upon the various people concerned, unless the true meaning of reg. 23 (1) is that a notice can be properly served upon one " deemed displayer " only. If, on the other hand, one of those upon whom the notice is served actually complies with it to the extent of removing the offending advertisement, and this is not forthwith replaced, any deemed consent to the display automatically lapses: again, it is only continued display that is protected by reg. 7.

New Streets and Planning

By J. F. Garner, ll.m.,
Town Clerk of Andover

The law relating to the construction, widening and making up of streets has always been a highly complicated subject, and the reaction on this branch of law of the 1947 Act has not simplified matters—further, the Acts of 1950 and 1951 hereafter mentioned have made the subject even more recondite to all but those initiated by practice. Nevertheless, these provisions may be of vital importance to frontagers, and a working knowledge of the essentials is a *sine qua non* to the private estate developer. In this article, therefore, an attempt is made to bring some of the more important provisions into focus.

A. The layout and construction of new streets

(1) *By private enterprise*

The private landowner wishing to lay out a new street will of course have to obtain planning permission under the 1947 Act, and also the permission of the local authority (*i.e.*, the county borough or county district council) under their " new streets " by-laws made under s. 157 of the Public Health Act, 1875.[1] These by-laws deal with the " level, width and construction of new streets," and it should be noted that an ancient highway may become a " new street," for a " street," at least

[1] The power to make by-laws under the section was extended to rural districts by the Rural District Councils (Urban Powers) Order, 1931.

for this purpose, involves the idea of a roadway with buildings on each side (see *Robinson* v. *Barton–Eccles Local Board* (1883) 8 App.Cas. 798, and definition in s. 4 of the 1875 Act). If it is desired to make a proposed street of *less* width than the minimum prescribed by the by-laws it may be possible to obtain from the Minister, on the application of the local planning authority and in consultation with the highway authority, a development order under s. 13 (4) of the Town and Country Planning Act, 1947, dispensing with or modifying the particular by-law requirement.[2] It would have to be shown, however, that the proposed width of the intended new street was not less than the minimum laid down in the Minister's Explanatory Memorandum on the subject circulated with Ministry (of Local Government and Planning) Circular 19, dated April 25, 1951. It should also be noted that the local highway authority [3] may agree with the landowner concerned to carry out the actual work of constructing the road at his expense, under s. 146 of the Public Health Act, 1875; they may even agree, under the same section, to make a contribution towards the expenses of making such a road. In practice, it will often be found desirable to use this section, as those local authorities who execute work by " direct labour " will often be able do the work at a reasonable price.

(2) *By the local authority*

If the local highway authority are planning the construction of a new street—and we are here contemplating " streets," as distinct from " roads " intended primarily for through traffic —they should take steps to ensure that the site of the street is defined by the development plan as the site of a proposed road, and that the land is therein designated as land to which s. 48 of the Town and Country Planning Act, 1947, applies. The " appropriate council " (*i.e.*, the local highway authority [3]) may then at any time by order declare the land to be a private street, *provided* the land itself has been acquired by the council, or all the persons " interested " therein have consented to the making of the order. The council need not, however, acquire land which will eventually front on the proposed new street; they need only acquire the actual site.

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[2] Such an order is subject to annulment by either House within 40 days: see s. 13 (5).

[3] *i.e.*, a county borough, borough or urban district council, or a county council (in the area of a rural district).

Having made an order under s. 48, the council may then make up the " private street " under the provisions of the Private Street Works Act, 1892, or s. 150 of the Public Health Act, 1875 (or the provisions of a local Act, as may be applicable in the particular district), at the expense of the frontagers; although in the case of the 1892 Act procedure it will, presumably, be open to the frontagers to appeal to the court and argue that " the proposed works are . . . unreasonable " (see s. 7 (*d*) thereof). In operating the appropriate " private street works code," the local authority will have to observe the modifications imported by the Town and Country Planning (Construction and Improvement of Private Streets) Regulations, 1951 (S.I. 1951, No. 2224; [1952] J.P.L. 102), which restrict the amount of the expenses which will be recoverable from the frontagers in such a case, and the circumstances in which they are to be so recoverable.

This section is, of course, a new power open to the highway authority; before the coming into operation of the development plan, the authority would be able to make a new street only by purchasing the necessary land, and there would be no question of operating the Private Street Works Act (or the other corresponding legislation), as the street would be, from its inception, a highway repairable by the inhabitants at large. A local authority who are a housing authority have powers to lay out streets, etc., under s. 79 of the Housing Act, 1936, but here again normally no question of " private street works " could arise.

B. The widening of existing streets

Before the passing of the 1947 Act, the customary procedure for securing the eventual widening of an existing street not of by-law width which was not fully developed, was by making a " new street " order under s. 30 of the Public Health Act, 1925, which, *inter alia*, restricts new development in front of the notional widening. As an alternative, the authority may prescribe an " improvement line " under s. 33 of the same Act, which broadly has the same effect, although there are technical differences between the two sections. These respective procedures may still be used, and no doubt they will continue to serve a useful purpose in many cases, but each procedure has its own limitations, and the local authority may now use s. 48 of the 1947 Act, provided the land required for the widening has been defined and designated in the development plan. The procedure is the same as that described above

for a new street, and it should be noted that the *whole* of the widened road (including the existing highway) can be declared to be a private street, although the cost of making up the part thereof which is already a highway will not be recoverable from the frontagers.

C. The development of new streets

The New Streets Act, 1951, contains two main principles: first, that before new buildings are erected on a private street (which expression includes land deemed to be a private street by virtue of an order under s. 48 of the 1947 Act), the sum likely to be needed for the eventual streets works should be paid to the local highway authority [4] or secured to their satisfaction; and, secondly, that in certain circumstances frontagers to a private street should be entitled to require the highway authority to carry out street works and " adopt " it as a highway repairable by the inhabitants at large. It is not proposed to discuss this statute in detail, as it is the concern rather of the highway authority as such, than of the planning authority, but it does seem that the two authorities should co-operate closely in the administration of the Act, and the private developer also should bear in mind the provisions of the development plan when considering whether or not the provisions of the 1951 Act will apply in his particular case. Thus, the local authority may exempt a particular building from the provisions of the statute where they are satisfied that the street " is not, and is not likely within a reasonable time to become, sufficiently built-up to justify the use of powers under the appropriate private street works code for securing the carrying out of street works in the street " (New Streets Act, 1951, s. 1 (3) (*e*)). Surely, in considering such a case, the local authority should pay attention to the provisions of the development plan.

The Public Utilities Street Works Act, 1950, regulates in another sense, development of new streets. Broadly speaking, the intention of this highly complicated and technical statute is, so far as here relevant, to restrict the number of openings made in streets by statutory undertakers and to regulate the consequent necessary reinstatement of the surface of the streets. For the present purposes, the most important provision is that (see Sched. II) enabling the " appropriate local

[4] In this case, this means a county or non-county borough or an urban district council or a rural district council in respect of whom an Order has been made under s. 9 (2).

authority " [5] to declare a street to be a " prospectively maintainable highway." The declaration has to be registered in the local land charges register,[6] and then the authority will be able to exercise the control afforded by the Act over the execution of undertakers' street works in the street in question. The importance of this provision is enhanced when the interpretation of " street " in s. 1 (3) of the Act is examined, as the term is defined exceptionally widely, so as to include " any length of land laid out as a way whether it is for the time being formed as a way or not, irrespective of whether the highway, road or other thing in question is a thoroughfare or not." Land designated and defined for the purposes of s. 48 of the 1947 Act could clearly be designated a " prospectively maintainable highway "; so, probably, could land shown on a private estate developer's drawing board as being the site of an intended road. Here again, however, there seems to be need for co-operation between the local highway authority and the local planning authority.

A further provision in the 1950 Act is that entitling the highway authority to require statutory undertakers to execute their street works in " controlled land " at the side of a highway (including a " prospectively maintainable highway "), in lieu of within the confines of the street itself. " Controlled land " means land abutting on the highway unincumbered by buildings, which either belongs to the street authority for road purposes, or is the subject of a subsisting authorisation of compulsory acquisition for such purposes, or lies between the boundary of the street and an improvement line prescribed under s. 33 of the Public Health Act, 1925. Land designated and defined under s. 48 of the 1947 Act as the site for a proposed widening is thus not " controlled land " for this purpose, until such time as it may have been acquired by the local authority, or until they have been authorised to acquire it compulsorily—and designation of the land as being subject to compulsory acquisition in the development plan does not amount to an " authorisation " for compulsory acquisition.

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[5] *i.e.*, the council of a borough or urban district, and, in relation to a street in a rural district, the county council: Act of 1950, s. 39 (1).

[6] See the Public Utilities Street Works Act, 1950 (Registration of Declarations) Rules, 1951 (S.I. 1951, No. 69).

Development Value of Leasehold Interest

By W. A. Leach, F.R.I.C.S.

The interest in the land of a claimant under s. 58 of the Act has to be valued having regard to the incidents to which it was subject on the appointed day (s. 61 (5)). The incidents include, of course, the terms of any lease to which the interest was then subject.

Assume a large area of land suitable for immediate housing development and worth £1,000 per acre, but let to a golf club under a lease expiring in, say, 1990 at £1,000 p.a.

Having regard to the extent of land likely to be taken for new housing over the period up to 1990, the expanses of existing housing which will be ripe for redevelopment before that year, the planned expansion of smaller towns and the creation of new towns, and the possibility of a static or declining population before 1990 (apart from purely local circumstances) the building value of the land in 1990 is probably too remote for specific valuation.

Two valuations are to be made:—

Unrestricted value	Lease with 42 years to run at £1,000 p.a. with reversion to golf course, agricultural land, accommodation land and possibly building land.
Restricted value	Lease as before but with reversion to golf course or agricultural land only.

As regards the former, during the early years of the lease in particular, the existing building value in the land would make the rent of £1,000 p.a. more secure—it would be to the lessor's profit if the lessee were to fail, since £1,000 per acre could then be realised. However, following s. 62 (2) and assuming that the lessee will not fail, the rent of £1,000 p.a. must be valued for the whole term of the lease at, say 4 per cent. The unrestricted reversion would, perhaps, not be over-valued if one assumed that the rent would continue in perpetuity, *i.e.*, £1,000 p.a. capitalised in perpetuity at 4 per cent. —£25,000.

The circumstances of restricted value remove much of the security for rent, but assuming the lessee will not fail, the rent

of £1,000 p.a. must be valued for 42 years at, say, 6 per cent., unless the tenant club is unusually strong financially. Having regard to the less valuable reversion the total value might well be at £1,000 p.a. in perpetuity at 6 per cent.—£16,670.

The Lands Tribunal might not, however, accept valuations on this basis. In *Trustees of Mrs. A. M. Birts* v. *Central Land Board* (1951) 2 P. & C.R. 243, the claim was for loss of development value in the potentialities of certain houses for conversion into shops on the expiration of the current ground leases. The claimant's valuer argued that the prospects of the conversions made the ground rents more secure, and he valued them at a lower percentage for the unrestricted than for the restricted value.

The Lands Tribunal would not accept this in view of s. 62 (2), holding that as the tenant had to be deemed to fulfil his contractual obligations, the same percentage should be adopted in both cases.

It is respectfully suggested that the Tribunal were not correct. A leasehold interest is normally valued on the assumption that the lease will endure for the full term and that no cause of forfeiture will arise. The rent payable is valued for the duration of the lease (*e.g.*, in the case above for the full 42 years) and effect is thereby given to s. 62 (2), the object of which would seem to be to prevent claims based on " acceleration of the reversion," *i.e.*, the assumption that the lease will be surrendered or forfeited. The landlord having granted the lease was prepared to forgo the power to develop during its currency, and s. 62 (2) keeps him to that position.

To interpret s. 62 (2) as providing that the security of the ground rent cannot be looked at, so that the percentage cannot be varied, is in effect to say that the rent under the lease must be regarded as unimpeachably gilt-edged, and that whatever the actual circumstances may be it should be valued at 3 per cent. (which might have been a suitable gilt-edged rate in January, 1947). The Tribunal did not go so far in the case cited, but that is the logical end to the reading adopted. There is no ground on which the percentage applied by the claimant to the estimation of the unrestricted or restricted value should be applied in both valuations as the proper rate.

The interpretation of the Tribunal also contravenes s. 62 (1) under which Rule (2) of section 2 of the 1919 Act must be applied, *i.e.*, the valuation must be on the basis of a sale in the open market by a willing seller, for which purpose the security of the income *must* be looked at.

In the foregoing example there will be a depreciation in the value of the landlord's interest due to the taking away of the development value in the land, even assuming that the lease will run its full course, for which compensation ought to be paid and is not clearly excluded by the Act. Since Part VI of the 1947 Act is a compensation measure, and there is a loss, the Act should be construed strictly against the Central Land Board, and if there is any conflict between s. 62 (1) and s. 62 (2), the basic general rule in the former should only be set aside by the special rule in the latter to the minimum extent necessary to give reasonable effect thereto.

In view, however, of the previously cited decision by the Lands Tribunal, it might now be necessary to go to a higher court to secure compensation.

Conditions on Development Affecting Trunk Roads

The following narrative relates to conditions which the Minister of Transport is empowered by art. 7 of the General Development Order, 1950, to require the local planning authority to impose on development affecting trunk roads.

The correspondence [1] relates to an application for planning permission to erect a dwelling-house on a plot of land adjoining a trunk road, with a new vehicular access-way at one end of the frontage. The trunk road has a kerbed footway along the site frontage. No part of the highway is included in the area of the site.

Extract from art. 7, General Development Order, 1950

(1) Before granting permission for development affecting trunk roads, whether unconditionally or subject to conditions, a local planning authority shall consult with the Minister of Transport as he may appoint.

(2) The Minister of Transport may give directions restricting the grant of permission by a local planning authority during such period as may be specified in the directions in respect of any development affecting trunk roads, or in respect of such development of any class as may be so specified, and a local

[1] The letters are published with the consent of the authorities concerned.

planning authority to which a direction has been given under this article shall deal with applications for permission for development to which such a direction relates in such manner as to give effect to the terms of the direction.

Direction dated November 15, 1951, *by the Minister of Transport to the Clerk, Denbigh County Council relating to an application for planning permission for the erection of a dwelling-house.*

Reasons for the direction: To safeguard the interests of traffic on the highway.

Application made by Mrs. E. M. Williams, 6, George Street, Rhos-y-Waen, Chirk, Nr. Wrexham, and received by or on behalf of the council on October 15, 1951, for permission for development

(i) Building operation;
(ii) Engineering operation (which includes a means of access);
(iii) Mining operation;
(iv) Other operation;
(v) Material change in the use of any buildings or other land;

on land adjoining Trunk Road A.5, near Parish Hall, Chirk.

Notice is hereby given under Article 7 (2) of the Town and Country Planning General Development Order, 1950, that the Minister:—

* * * *

(*c*) Directs that the following conditions be attached to any permission the Council may give:—

(1) A vehicular crossing over the footway shall be constructed at the applicant's expense and to the satisfaction of the Highway Authority.
(2) A turning space for vehicles shall be provided within the curtilage of the premises.

Letter dated December 11, 1951, *from the County Planning Officer, Denbigh County Council, to the Divisional Road Engineer, Ministry of Transport, Cardiff.*

I refer to your Direction on Form T.R.110 dated November 15, 1951, in respect of the above proposal.

In my opinion, the conditions which you specify might be examined in the light of the following considerations and

the views expressed by the Minister in his Circular No. 58/51 dated September 10, 1951.[2]

I enclose herewith six extracts from the above-mentioned circular and I suggest that these be read in conjunction with the conditions in question.

Condition (1)—Extracts (i) to (vi) have a direct bearing on this condition.

The condition appears to be unnecessary and, in my view, it is incapable of enforcement.

Furthermore, the formation and construction of crossings over footways is fully dealt with under s. 18 of the Public Health Acts Amendment Act, 1907, and the condition must be deemed to " alter the impact of more specific legislation." [3]

Again, the Local Planning Authority are not authorised to delegate their functions to the Highway Authority.

I must, therefore, conclude that this condition is unnecessary and *ultra vires* for the reasons that it is not enforceable; it conflicts with more specific legislation and requires the delegation of planning functions contrary to the provisions of the Act.

It might also be argued that the condition is bad, inasmuch as it relates to land outside the submitted site and not under the control of the applicant. This, however, raises other issues which I do not propose to pursue in this case.

Condition (2)—Apart from the question as to whether the terms of this condition could be enforced, it is to be noted that the applicant has shown a turning space for vehicles on the submitted plans. The condition is, therefore, at least, unnecessary.

In my opinion, this application should be dealt with without restricting the grant of permission. The applicant may, however, be informed by means of a note on the approval certificate or otherwise by letter, that she must consult the Highway Authority in regard to the construction of the proposed crossing over the footway.

I assume that you have duly considered whether the access gates should be set back and the fences on either side thereof splayed.

I shall await your observations before I submit this matter to my committee and perhaps you will kindly let me have a reply as soon as possible.

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[2] Printed in full at [1951] J.P.L. 600.

[3] See Extract (v) from paragraph 12 of the Circular, quoted below.

Extracts from Ministry of Local Government and Planning Circular No. 58/51 enclosed with the above letter.

Paragraph 10

(i) "... It is obviously preferable that wherever possible permission should be granted with the minimum of qualification: the attempt to guard against every possible contingency and regulate every trifle is not only a sign of fussy and over-anxious administration but frequently defeats its own ends."

Paragraph 11

(ii) "... conditions to be satisfactory must be capable of enforcement; this means not only that they should be clear and precise in expression, but that they should be couched in such a form that the Council will be able to take effective action if they are not observed."

(iii) "Even when a condition is clear and precise, it may still fail in its purpose because the authority would have no power to impose an adequate sanction if it were not complied with. The extent of what can be required by an enforcement notice is defined by s. 23 (2), and it will often be found useful to test the worth of a condition by examining it in the light of this subsection."

Paragraph 12

(iv) "... it will often be found that matters which are of proper concern to planning are already regulated either by statute or common law. In such cases it is generally undesirable to seek to cover the same ground by attaching conditions to a planning permission. The existence of the condition will not free the developer from his other responsibilities; if the requirements are the same the condition is unnecessary, while, if they conflict, confusion will result.

(v) "... in general, the powers of the Planning Act ought not to be used to duplicate or alter the impact of more specific legislation ..."

Paragraph 13

(vi) "... local planning authorities are not authorised to delegate their powers and duties except in pursuance of s. 34. Conditions which leave the extent of the obligation imposed by them to be decided by a third party should therefore be avoided."

Reply dated December 17, 1951, from the Divisional Road Engineer (Wales and Monmouth), Ministry of Transport.

With reference to your letter of the 11th instant, I have the following observations to offer:—

Condition (1). This matter has already been the subject of consultation between my department and the Ministry of Town and Country Planning. As a result I have been advised that an application involving vehicular access to the highway may be regarded (if there is nothing expressly to the contrary) as including an application to do any necessary consequential works on the highway and in such cases a condition to the effect that the applicant shall construct the crossing over the footway or verge to the satisfaction of the Highway Authority may be imposed.

The imposition of such a condition is considered necessary in that it ensures that proper provision is made to allow vehicles to pass safely and conveniently from the applicant's premises or land to the carriageway.

I am also advised that planning permission does not affect the application of s. 18 of the 1907 Act, or any alternative local enactment, and in practice it may not be desired to enforce formalities under such provisions where the position is in fact covered by the planning permission.

Condition (2). This condition was included because the plan which accompanied Form T.R.108 did not provide for a turning space. The County Surveyor's report stated that the applicant's representative expressed willingness to provide a turning space and I assumed that the amendment to the plan which accompanied the report was done by the County Surveyor and was not actually submitted by the applicant as a substitute for the original. If the latter was in fact the case, I suggest the matter might have been clarified in your letter and the condition would then, of course, have been unnecessary.

As to whether the terms of this condition could be enforced, I take it that you have in mind whether the turning space would in fact be used for this purpose. I agree that it would not be possible to enforce drivers of vehicles to make proper use of the space, but by its provision the Highway Authority has ensured the facility which would allow a driver to emerge on to the highway in a safe and proper manner.

Letter dated December 21, 1951, from the County Planning Officer, Denbigh County Council, to the Under-Secretary, Welsh Office, Ministry of Housing and Local Government.

I enclose herewith the following particulars:—

(i) Copy of Direction dated November 15, 1951, by the Minister of Transport:

(ii) Copy of my letter dated December 11, 1951, to the Divisional Road Engineer of the Ministry of Transport:

(iii) Copy of enclosure referred to in the third paragraph of my letter, and

(iv) Copy of letter dated December 17, 1951, sent to me by the Divisional Road Engineer in reply to my letter of December 11, 1951.

I wish to make it quite clear that I do not ask for your opinion on the determination of the application to which the enclosures relate for the reason that to do so would be to invite an obvious reply. I send the enclosures only to illustrate the principle in question and to show the conflict in the views expressed by your Ministry as referred to by the Divisional Road Engineer in his letter of December 17, 1951, and those expressed in Circular No. 58/51.

This matter is continually arising and I should be glad if you would kindly clarify the position in regard to the drafting of planning permissions as dealt with in the circular herein.

Reply dated January 29 from the Welsh Office, Ministry of Housing and Local Government.

With reference to your letter of December 21, we are advised that where an application is expressly limited to the doing of works on the applicant's own land, the wording of s. 14 (2) (*a*) would not allow an authority to impose a condition requiring the carrying out of works on the highway. Most applications for permission for development involving the provision of a means of access for vehicles to the highway are not, however, specifically limited to the doing of work on the applicant's own land, and it is considered that an application to form a means of access for vehicles may be regarded as covering any works on the highway necessary to allow vehicles to pass safely and conveniently from the premises of the applicant to the carriage way. In such cases, a condition to the effect that the applicant shall construct

the crossing over the footway or verge between his land and the carriageway to the satisfaction of the Highway Authority may be imposed where it is desirable on planning grounds.

As regards the question of whether the construction of the crossing should be made subject to the satisfaction of the Highway Authority, Circular 58/51 was not intended to suggest that conditions should never be imposed which left any details whatsoever for subsequent decision. A distinction can be drawn between conditions which leave details (*e.g.*, the standard of construction of works) for future settlement and those which give no indication of the extent of the developer's liability. The first type of condition is unavoidable unless detailed specifications are to be included in conditions; the criticism in para. 13 of the circular is directed against the second which, in effect, purports to transfer to a third party the right to impose such conditions as he thinks fit. There is no objection to the condition in question, therefore, since the Highway Authority is brought in merely to settle the details of a requirement clearly laid on the applicant by the permission.

We are advised, also, that the provisions of s. 18 of the Public Health Acts Amendment Act, 1907, apply only where the applicant intends to construct a crossing, and cannot be used to *require* him to construct one. A planning permission does not affect the application of s. 18 and where those provisions apply and an authority enforces the formalities of that section, a condition of this type on the planning permission is not necessary. Where, on the other hand, an authority does not desire to enforce those provisions no objection is seen in imposing the condition on the planning permission.

With regard to the condition No. 2 which the Divisional Road Engineer required to be attached to the permission, he has agreed that the condition would not have been required if the plans submitted to him had shown that provision was being made for a turning space.

Development in Barsetshire

Compulsory Purchase where Service Tenancy—II

Following their formal discussion on one of the Barsetshire cases reported in our March issue (ante, p. 149) *the Surveyor and Valuer concerned encounter each other again at one of the meetings at the Royal Institution of Chartered Surveyors. The discussion continues, but on this occasion it is, of course, much more informal.*

S. Good afternoon, civil servant.

V. Good afternoon—but you're a fine type, I must say.

S. I?

V. Yes—pulling a fast one on me as you did in that Barsetshire case.

S. Every man for himself, old chap—it's not every day one catches a Government Valuer looking the other way.

V. I should have known from your very docility that you were up to something, but I'm afraid your comeback took us by surprise. I suppose you realise I had a lot of explaining away to do after you had gone?

S. I'm sure you had. I'm quite certain your senior realised very quickly that he had made an ill-judged decision in accepting my contention, but he surely couldn't expect me to point out to him that your creation of a potential controlled tenant automatically slew the hypothetical gentleman residing at s. 52.

V. I suppose not.

S. (*reminiscently*) There were some interesting points in that case. Really we should first have gone to the court to decide whether the occupant was a service tenant or not. If it was a controlled tenancy the court would also have needed to determine a standard rent, since no rent passes now and the premises have never been let—it isn't possible for there to be a nil standard rent.

V. I'm uncertain if there can be a controlled tenancy where no monetary consideration passes—certainly it is not yet a statutory tenancy.

S. The consideration was the service the caretaker rendered to my client by residing on the premises, but how we translate that into £ s. d. I haven't really thought—that would be a nice problem for a rent tribunal.

V. So if the court decides it is a service tenancy we treat the case as a vacant possession valuation and condition the vacant possession value by applying s. 52.

S. Right—but when the court decides it is a tenancy with the benefit of the protection of the Rent Restrictions Acts and a standard rent has been fixed, we then value as an investment.

V. Don't forget the caretaker only occupies a few rooms. There is vacant possession of all the remaining accommodation, so don't be too ready to dispense with s. 52—you will probably need it again.

S. Really, you make life impossible.

V. You begin to see now why you scored what appeared to be an easy victory. It is true that on reconsideration my senior and I realised we had agreed to something which, strictly speaking, we should not, but on thinking things over we decided that academics are academics, but sometimes a seasoning of commonsense improves the flavour. This case had already gone on for 18 months; there was a very small sum of public money involved, and by the time we had all been to court, what with one thing and another any saving in compensation would have been more than eaten up—also we felt that having agreed with you, even if we might academically have been in error, we had a moral obligation to abide by our bargain. Even government servants can be human. Anyway, you'll be pleased to hear the acquiring authority have rehoused the caretaker and taken possession.

S. (*musingly*) I've been thinking—I believe the Rent Restrictions Acts are not perpetual, but are part of the legislation renewed annually, so if the caretaker were adjudged a controlled tenant, I could have pleaded that the Acts can only with certainty apply for one year and then put in my valuation based on vacant possession deferred one year.

V. Really, you have the most ingenious ideas. That's almost as good as the time you tried to persuade me to accept an exposed party wall as an unfinished building under s. 78 and give you absolution from development charge on the adjoining two acres.

S. (*sadly*) Yes, and if it hadn't have been for the Restriction of Ribbon Development Act I might have got away with it.

V. You might, but I doubt it—Let's go and have tea!

Progress of Development Plans

(*Continued from p. 217, ante*)

The following is a continuation of the list of plans submitted to date (April 17, 1952). Any objections should be sent to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before the closing date indicated.

4. *Chester County Borough Council.*

6. *Cheshire County Council* (*Hoole Urban District and parts of Chester Rural District*).

The Minister of Housing and Local Government on March 31, 1952, approved, with modifications, the development plans for the City of Chester and for a neighbouring area consisting of Hoole Urban District and parts of Chester Rural Districts.

The plans, as approved, will be deposited in the districts concerned for inspection by the public.

7. *Westmorland County Council* (*excluding Joint Board area*).

The Minister has approved the development plan for the county of Westmorland, excluding the area of the Lake District Joint Board.

43. Warwickshire County Council.
Local inquiry : June 17, 1952.

49. Northampton County Council.
Local inquiry : May 28, 1952.

50. Bucks County Council.
Local inquiry : June 16, 1952.

51. Halifax County Borough Council.
Local inquiry : June 24, 1952.

52. Grimsby County Borough Council.
Local inquiry : April 30, 1952.

57. Huddersfield County Borough Council.
Local inquiry : May 14, 1952.

60. Huntingdonshire County Council.
Local inquiry : May 14, 1952.

73. Northampton County Borough Council.
Submitted to Minister: March 14, 1952.
(*London Gazette*, March 21, 1952.)
Closing date for objections: April 30, 1952.

74. Dewsbury County Borough Council.
Submitted to Minister: March 17, 1952.
(*London Gazette*, April 8, 1952.)
Closing date for objections: May 19, 1952.[1]

75. Doncaster County Borough Council.
Submitted to Minister: March 24, 1952.
(*London Gazette*, March 28, 1952.)
Closing date for objections: May 10, 1952.

76. Cheshire County Council (part 2).
Submitted to Minister: March 25, 1952.
(*London Gazette*, March 28, 1952.)
Closing date for objections: May 10, 1952.

77. Warrington County Borough Council.
Submitted to Minister: March 25, 1952.
(*London Gazette*, March 28, 1952.)
Closing date for objections: May 15, 1952.

78. Isle of Wight County Council.
Submitted to Minister: March 26, 1952.
(*London Gazette*: March 28, 1952.)
Closing date for objections: May 10, 1952.

79. Cambridge County Council.
Submitted to Minister: March 28, 1952.
(*London Gazette*, March 28, 1952.)
Closing date for objections: May 15, 1952.

80. Wallasey County Borough Council.
Submitted to Minister: March 27, 1952.
(*London Gazette*, April 1, 1952.)
Closing date for objections: May 10, 1952.

81. Dorset County Council.
Submitted to Minister: March 28, 1952.
(*London Gazette*, April 1, 1952.)
Closing date for objections: May 31, 1952.

82. Staffordshire County Council.
Submitted to Minister: March 31, 1952.
(*London Gazette*, April 1, 1952.)
Closing date for objections: May 24, 1952.

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[1] Amended date.

83. West Bromwich County Borough Council.
Submitted to Minister: March 27, 1952.
(*London Gazette*, April 4, 1952.)
Closing date for objections: May 31, 1952.

84. Soke of Peterborough County Council.
Submitted to Minister: March 28, 1952.
(*London Gazette*, April 4, 1952.)
Closing date for objections: May 17, 1952.

85. Kent County Council (Part A).
Submitted to Minister: March 31, 1952.
(*London Gazette*, April 18, 1952.)
Closing date for objections: July 18, 1951.

86. York County Borough Council.
Submitted to Minister: March 31, 1952.
(*London Gazette*, April 4, 1952.)
Closing date for objections: May 14, 1952.

Points from Development Plan Inquiries

Burnley County Borough Council [1]

The inquiry commenced on December 12, 1951, and sat for six days, there being 156 objectors to the plan.

The development plan consisted of a written statement, a town map, a programme map and a designation map (the latter referring to a plot of land adjacent to Manchester Road Station to be used for post office purposes).

In addition to the many individual objectors, objections were lodged on behalf of several large companies for whom Mr. Harold Williams, K.C., appeared, the Burnley and District Chamber of Trade and the main local brewery company (Massey's Burnley Brewery, Ltd.), for whom Mr. C. N. Glidewell, Barrister-at-Law, appeared in respect of some 20 licensed premises affected by the plan.

The plan itself contained no particular points of legal

[1] We are indebted to Mr. C. V. Thornley, M.A., LL.B., the Town Clerk of Burnley, for this note.

interest, and apart from two submissions by one local solicitor to the effect—

1. that existing shops in an area designated for residential purposes would *not* have the benefit of their existing use; and
2. that agreements reached with objectors whose objections had been withdrawn were a matter for publication to the inquiry;

no other submissions on points of law were made.

With regard to the first point, no ruling was given, but on the second point the Inspector ruled that only if an agreement reached affected another property of an objector were the terms of agreement to be made public.

For Massey's Burnley Brewery, Ltd., Mr. Glidewell called Mr. W. Dobson Chapman, a past President of the Town Planning Institute, and he submitted to the inquiry draft alternatives wherever his clients' property was affected.

Housing

In any development proposals for Burnley, the planner is inevitably faced with certain natural difficulties, in that the county borough lies on the lower and middle slopes towards the south-east of the intersection of the valleys of the River Calder and Pendle Water. The town is almost completely surrounded by hills and moorlands, rising to altitudes between 1,300 and 1,800 feet above sea level, and owing to its physical features, it forms a centre for a series of small communities, the nearest large town being Blackburn, some 10 miles away. Geologically, the area is known as the Burnley Coal Basin, and is heavily faulted. Because of the series of valleys upon which the town is built, areas are difficult of access, and a quantity of land is unsuitable for development due to the steep contours, inaccessibility, and bad aspect. It must also be borne in mind that the area of the borough is only 4,695 acres, which does not leave very much land available for development.

Burnley's position at the intersection of two valleys has given the town natural importance as a communication centre, and six Class 1 roads converge upon the town bringing traffic through the central streets.

Yet another problem encountered was the growth of population, the biggest ara of which was between 1861 and 1891, when the population grew by almost 60,000, coinciding

with the major industrial growth. The result is that a high proportion of the properties in the town were built before 1890, and so far as residential property is concerned are of a very high density. Out of a total of approximately 28,000 houses included in the borough, 6.4 per cent. are built to a density of over 50 to the acre, 35 per cent. to a density of between 40 and 50, and 34.5 per cent. to a density of 24 and 40 to the acre. Only 24.1 per cent. of the houses have a density of 24 to the acre or less. Most of the houses to be affected by redevelopment proposals are of the very high density figures, built before 1875, many being of the back-to-back variety without through ventilation, and without ample sanitary conveniences.

Industry

From the point of view of industry, the present area within the town is 477 acres, and the proposed major industrial areas under the plan contain 504 acres. Much of the industry is cotton weaving, and every encouragement is being given as a separate matter of policy, to cause diversification of industry, to give a more balanced structure.

Open space

Two large parks and a large playing field site occupy 219 acres, and whilst there are one or two smaller parks of comparatively insignificant area, the plan provides for new areas of open space in districts at present very badly served, in many cases utilising for the period of the plan areas of residential property which it is anticipated will be cleared, and until such time as these areas can be redeveloped and when additional surrounding areas make this redevelopment reasonable.

Educational requirements

The plan also makes provision for the local education authority's requirements so far as is practicable, and in accordance with the education authority's development plan.

Central area

It has previously been stated that the town's position has made it the hub of six converging main roads. Much traffic

from Lancashire to Yorkshire must pass through the centre of the town where the traffic congestion is heavy, and where the main streets are congested.

There is an obvious need to eliminate from the central area through traffic which does not need to use the centre. It is intended to carry this out by an inner by-pass proposal. The main centre street extends in part for some 150 yards, and narrows to as little as 22 feet, the over-all width of this street being 35 feet 6 inches.

The plan envisages the demolition of the shop properties on the northerly side of this main street. The resultant area of land left on the northerly side would not be sufficient in depth to allow for the erection of new shops, and it is the council's intention to use the open space created for the provision of car parks and gardens (central gardens being an extremely popular feature with the older residents in the borough). The shopping area would thus be extended, and have a tendency to move in a slightly northerly direction, giving a new shopping area, but nevertheless a defined shopping area—the present area is not clearly defined and is scattered.

Of the blocks of property proposed to be demolished in the centre only one has been erected since 1874.

The plan provides for an increase of the shopping area, and it must be borne in mind that Burnley acts not only as a shopping centre for the borough, but also for many surrounding areas. The Lancashire County Development Plan makes reference on similar lines.

General

The major means of transport to and from the town for passengers is by road, the rail services being poor, and journeys to other towns taking longer by train than by road, whilst in addition, the main stations are well away from the centre of the town. Consequently, the plan makes provision for the urgent need of a proper central bus station in close proximity to the shopping area.

This bus station will cater for local and long distance services, thus enabling easy transfer of passengers from one service to another. The central bus station is not near to the railway station, as the need for close communication between the two is not considered of great importance owing to the poor railway facilities.

The plan might be described as one only creating difficulties to those whose premises were affected, and as stated earlier, apart from objections made by those persons directly affected, whose objections were mainly based on the grounds of hardship and lack of need for any uniform system, no legal or practical points of any great note emerged from the inquiry.

Statutory Instruments

The Ironstone Restoration Fund (General) Regulations, 1952

(S.I. 1952, No. 547)

Made	*March* 17, 1952
Laid before Parliament . .	*March* 18, 1952
Coming into Operation . .	*April* 1, 1952

[*Summarised*]

These Regulations are concerned with the making of payments to and from the Ironstone Restoration Fund, which is established under the Mineral Workings Act, 1951, for the purpose of financing the restoration of land used for the working of ironstone by opencast operations. S. 3 of the Act imposes on operators an obligation to pay into the fund contributions assessed on the tonnage of extracted ironstone in its crude state before calcination, and provides that the relevant tonnage of any ironstone which is not weighed until after calcination shall be estimated by reference to the weight after calcination in accordance with such formula as may be prescribed by regulations. Reg. 3 prescribes the formula. The remaining regulations are of a procedural character, and deal with returns of extracted ironstone which have to be made to the Minister under s. 4, applications for the determination of rates of payments from the fund to be made to operators under ss. 10 and 11, representations with respect to the provisional determination of such rates by the Minister, and claims by operators for payments from the fund under s. 12 of the Act.

The Public Rights of Way (Applications to Quarter Sessions) Regulations, 1952

(S.I. 1952, No. 559)

Made	*March* 17, 1952
Laid before Parliament . .	*March* 19, 1952
Coming into Operation . .	*April* 1, 1952

[*Summarised*]

Under Part IV of the National Parks and Access to the Countryside Act, 1949, maps are required to be prepared by certain local authorities showing public footpaths and certain other public rights of way. S. 31 provides for the determination by quarter sessions of disputes relating to these maps. These Regulations prescribe the appropriate court of quarter sessions and require the hearing to be before the appeals committee or the recorder as the case may be. They also make provision as to the manner of application to the court, as to the service of notices upon persons concerned and as to the parties to the hearing.

Parliamentary Intelligence

Replies to Questions in the House of Commons

Exclusion of Small Claims on £300 million fund.

In a written answer to Mr. Thornton-Kemsley Mr. Boyd-Carpenter stated that up to February 29, 1952, the Central Land Board had determined that about 5,000 claims in England and Wales and 4,000 in Scotland, fell within the *de minimis* provisions of s. 63 (and s. 60 of the Scottish Act). The total amount claimed in these cases could not be stated as many of the claims did not state any amount. (March 11, 1952, H.C. Debates, vol. 497, col. *135*.)

Rating Revaluation

In a written answer to Mr. C. I. Orr-Ewing Mr. H. Macmillan stated that the revaluation for rating purposes cannot be completed by April, 1953. The date would be postponed

by new legislation, but it was hoped to finish the revaluation by 1956 at the latest. (March 12, 1952, H.C. Debates, vol. 497, col. *144*.)

New Towns

In a written answer to Mr. Sparks Mr. Macmillan gave the information as to the New Towns in the table included at p. 284, *post*. The information is as at February 29, 1952. (March 18, 1952, H.C. Debates, vol. 497, col. *200*.)

Staff of the Ministry

In a written answer to Brigadier Medlicott, Mr. Marples said that the number of staff in the Ministry of Housing and Local Government employed on work under the Act of 1947 and the National Parks and Minerals Acts was on March 1, 1952, approximately 760, with a further 260 in regional offices and the Welsh Office. (March 25, 1952, H.C. Debates, vol. 497, col. *38*.)

Advertisement Appeals

In a written answer to Lieut-Col. Bromley-Davenport, the Minister of Housing and Local Government, Mr. H. MacMillan, stated that in the 12 months to December 31, 1951, there were 709 appeals under s. 31 relating to outdoor advertisements, of which 151 were allowed and 558 dismissed. (March 25, 1952, H.C. Debates, vol. 498, col. *38*.)

Ministerial Information and Circulars

The Ironstone Restoration Fund

The Ministry of Housing and Local Government have issued a pamphlet (H.M.S.O., 6d.) containing a brief explanation of the main provisions of the Mineral Workings Act, 1951, and the regulations and orders made thereunder, concerned with the Ironstone Restoration Fund.

New Towns

Position at February 29, 1952

(See Parliamentary reply, at p. 283, *ante*)

Town	Houses completed	Persons housed (approx.)	Houses under construction	Persons to be housed (approx.)	Factories. Number of Firms		Building and civil engineering workers employed [3]	Advances (£ million)
					Completed	Under construction		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Aycliffe . . .	403	1,310	468	1,520	—	—	538	1.5
Basildon . . .	135	380	479	1,560	1	2	777	1.0
Bracknell . . .	41	120	137	450	—	1	247	0.3
Corby	—	—	—	—	—	—	78	0.1
Crawley . . .	651	1,930	686	2,230	15	2	1,736	3.0
Cwmbran . . .	2	10	249	810	—	—	158	0.2
Harlow . . .	724	2,320	1,203	3,910	7	12	2,014	3.5
Hatfield . . .	66	190	333	1,080	—	—	257	0.4
Hemel Hempstead .	889	2,700	736	2,390	4[1]	4	1,624	3.8
Peterlee . . .	235	860	356	1,170	—	—	533	0.9
Stevenage . . .	380	970	725	2,360	—	—	1,658	2.5
Welwyn . . .	140	300	430	1,400	4[2]	—	575	3.5
Totals .	3,666	11,090	5,802	18,880	31	21	10,195	20.7

[1] Includes one adaptation.
[2] Includes two extensions.
[3] The figures in col. (8) do not include workers employed on local authority housing, schools, G.P.O., gas and electricity projects.

Notes of Cases [1]

Court of Appeal

Enforcement Notice—Model Village

Buckinghamshire County Council v. Callingham and Clarke [2] (April 7, 1952). The Court of Appeal dismissed an appeal from the decision of the Divisional Court (1951) 2 P. & C.R. 173 (noted [1951] J.P.L. 661), who had allowed the local authority's appeal from the decision of the Beaconsfield magistrates. The Divisional Court held that model buildings erected after September 30, 1929, the date of a resolution to prepare a scheme under the Act of 1925, without interim development permission, could be the subject of enforcement proceedings.

The Court of Appeal (Singleton and Morris L.JJ., and Lloyd-Jacob J.) held that erection of the model buildings, which varied in height from 2 ft. to 4 ft., constituted development under the planning legislation notwithstanding their small size. Anything erected, or begun, or the subject of a contract before the date in 1929 of the local authority's resolution of their intention to prepare a planning scheme was not affected by planning control. But any building erected after that date without permission was liable to enforcement proceedings.

The whole area could be used as a public exhibition, but the appeal failed and the case must go back to the justices in order that they might decide which buildings and erections had been put up, begun, or subject to contract after the relevant date.

Unfinished Buildings—S. 78 of the Act

Marks and Spencer, Ltd. v. London County Council and Central Land Board [3] (April 1, 1952). The Court of Appeal

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[1] Full reports of these cases will be published in *Planning and Compensation Reports.*

[2] Counsel: *Harold I. Willis*, instructed by Callingham, Griffith & Bate, for the appellants; *W. L. Roots*, instructed by Sharpe, Pritchard & Co., for the Clerk to the Bucks County Council, for the respondent authority.

[3] Counsel: *A. Capewell Q.C.*, *J. Ramsay Willis* and *V. M. C. Pennington*, instructed by J. C. Parry, for the appellants; *Geoffrey Lawrence Q.C.* and *H. E. Francis*, instructed by J. G. Barr, for the London County Council; *Denys Buckley*, instructed by the Treasury Solicitor, for the Central Land Board.

(JENKINS and MORRIS L.JJ., EVERSHED M.R. dissenting) allowed this appeal from the judgment of Harman J., reported at (1951) 2 P. & C.R. 257 (noted [1951] J.P.L. 718).

The appellants claimed that they were entitled to complete works for the erection of an office building in accordance with planning permission deemed, by virtue of s. 78 of the Town and Country Planning Act, 1947, to have been granted under Part III of the Act, without payment of development charge. Interim development permission had been granted in 1938 subject to the condition that the work should be commenced within six months and completed within 18 months from August 1, 1938. The existing buildings were demolished by July, 1939, but nothing further had been done.

Harman J. held that on the facts it was not possible to say that on July 1, 1948, the site contained works for the erection of a new building, and that the condition as to time was valid, and accordingly that s. 78 did not apply.

The appellants contended (a) that the demolition of the former building and preparation of the site were " works for the erection . . . of a building " within s. 78 (1); (b) that the condition as to time was either *ultra vires* or alternatively void because reasons for the decision were not given, and accordingly the works could be completed in accordance with interim development permission as required by s. 78 (1).

The Court of Appeal informed counsel for the respondents that the court did not need to hear him as to the time limit condition.

EVERSHED M.R. (who dissented from the majority of the court) said that in the common parlance of the industry " works " might include demolition, excavations and the like, but in its context " works for the erection " in s. 78 (1) did not seem to be intended to include works of demolition. He agreed with the judgment of Harman J., and thought the appeal should be dismissed.

JENKINS L.J. said that the object of s. 78 was to protect a building owner who had incurred expenditure with a view to carrying out a building project, in the faith of a permission given under the Act of 1932. It was unnecessary to be able to say that some work of construction on the site was part of a new building. It was sufficient if there had been carried out on the site operations which were part of the totality of the operations necessary to complete the building project. " Works " was well capable of including demolition, and it

was in accordance with the usage of the word in the field of building operations.

MORRIS L.J. agreed with the judgment of Jenkins L.J.

Appeal allowed, with costs. Leave to appeal to the House of Lords.

Lands Tribunal Decisions[1]

Compensation for Compulsory Purchase

London Investment and Mortgage Co., Ltd. v. Middlesex County Council [2] (Ref. 42/1951, March 13, 1952). This was a claim for compensation for the compulsory purchase of the freehold interest in a house at Hornsey, Middlesex. The property was subject to a lease to the acquiring authority expiring in 1997 at a rental of £5 p.a., and was used by them as a children's home—a use within class XIII of the Third Schedule Use Classes Order.

The claimants submitted a valuation of £947, being £124 capitalised value of the rental and £823 present value of freehold reversion—£5,000 in 46 years' time. The acquiring authority submitted a valuation of £200, being £136 capitalised value of the rental, and freehold value £56 in view of the age and character of the premises.

The Tribunal (JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.) said that an ordinary investor might not have given more than £200 for the property. But the occupying lessee was a special purchaser, and their compulsory purchase of the freehold interest indicated they would have been likely to outbid other persons. By acquiring the freehold interest they could avoid restrictive covenants in the lease. This enhanced the value of the interest and it was not a case of special suitability or adaptability within rule (3) of s. 2 of the Acquisition of Land, etc., Act, 1919, as explained in *Point Gourde Quarrying and Transport Co., Ltd.* v. *Sub-Intendent of Crown Lands* [1947] A.C. 565. The principle in *Vyricherla Narayana Gajapatiraju* v. *The Revenue Divisional Officer, Vizagapatam* [1939] A.C. 302, applied, and the compensation should be the sum that the

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[1] Full reports of these cases will be published in *Planning and Compensation Reports*.

[2] Appearances: *Mr. F. E. Cleary, F.R.I.C.S.*, for the claimants; *Mr. C. J. Knight, Solicitor*, for the Middlesex County Council.

authority would be willing to pay in a friendly negotiation, in order to acquire it for the purposes they had in mind.

On this basis the compensation was assessed at £400.

Claims for Loss of Development Value

Shenton v. Central Land Board (Ref. CLB/694/1951, March 18, 1951). This was an appeal against a determination by the Central Land Board that there was no development value in the freehold interest in a semi-detached house at Stockport. The house was in an almost fully developed building estate.

The Tribunal (J. P. C. Done, Esq., F.R.I.C.S.) stated that the possibilities of development arising from circumstances taking place after the appointed day may be taken into account in assessing unrestricted value if they were recognisable on the appointed day. It was improbable that a purchaser would have paid more for the property because of a remote possibility of development as part of further shopping facilities on the estate, and the restricted and unrestricted values were therefore the same.

Appeal dismissed, with three guineas costs.

Darroch and Darroch v. Croydon Corporation (Ref. C.L.B./39/1951. April 1, 1952). This was a claim for compensation for the compulsory purchase of the freehold interest in a house at London Road, Thornton Heath, with three reception rooms, kitchen and scullery on the ground floor; six rooms, bathroom and w.c. on the first floor; two attics on the second floor; and small cellars in the basement; and with a large garage at the side. Between 1933 and 1946 some use had been made of the garage and front land for storing motor vehicles in connection with the claimants' motor business.

The claimants claimed £6,000. Valuations submitted by the acquiring authority on the basis of conversion into four flats or for occupation as a single residence, amounted to £3,000.

The Tribunal (James L. Milne, Esq., F.R.I.C.S., F.A.I.) substantially accepted the acquiring authority's figures, and on the basis of the restricted value of the premises under s. 51 of the Act of 1947, with certain war damage notionally reinstated under s. 53, the value of the property was assessed at £3,500 less a deduction for the notional lease under s. 52. Compensation of £3,250 was awarded, with no order as to costs.

Notes of Planning Decisions *

Purchase Notice—Meaning of "reasonably beneficial use"

The following is an extract from the letter of the Minister of Housing and Local Government, dated January, 1952, confirming a purchase notice in respect of land at West Ham, London, E. 13, following a hearing by a Ministry inspector.

"Your council explained that they granted a limited permission for the rebuilding of this war-damaged property and imposed the condition that the property should be re-instated at the end of the period to the condition it was in immediately prior to rebuilding, in order to secure that the repairs should be restricted to the minimum in view of the imminence of redevelopment of the area.

"The Minister notes that your council contend that, since the property is still in occupation and capable of remaining in occupation for the period covered by the limited permission, subject to the minimum amount of repairs being carried out it is capable of reasonably beneficial use. They expressed the view that it was vitally important that the meaning of beneficial use should not be associated with economic value.

"The Minister is aware of the difficulties encountered by your council in the discharge of their duties as a planning authority and he appreciates their endeavour to see that there is no undue expenditure of building labour and materials on property which will probably be demolished after a few years. After full consideration of the representations of the parties however, he is satisfied that the conditions specified in paras. (*a*) to (*c*) of subs. (1) of s. 19 of the Act are fulfilled in the case of this land.

"The Minister accordingly confirms the purchase notice."

[By courtesy of Messrs. Hillearys, Solicitors, London, E.C.2.]

Use of Single Building as Two Buildings

The following is an extract from the letter of the Minister of Housing and Local Government, dated March 24, 1952,

* The Managing Editor desires to express his thanks to those who have been kind enough to send this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

giving his decision on an appeal against the refusal of the Ilfracombe Urban District Council, to consent to the change of use of part of a café at Ilfracombe to use as a motor coach booking office.

" The appeal raises the question whether or not the division of a building which is being used for a particular purpose into two parts, each of which will be used for a similar purpose, constitutes development within the meaning of s. 12 of the Act. In s. 12 (3) of the Act it is declared for the avoidance of doubt that ' the use as two or more separate dwelling-houses of any building previously used as a single dwelling-house involves a material change in the use of the building and of each part thereof which is so used.' The fact that this declaration is confined to the subdivision of a dwelling-house into two or more separate dwelling-houses is significant and the Minister is advised that it must be taken as implying that except in this specific instance, the division of a building into two or more parts does not in itself involve a material change in the use of the building or any part thereof.

" Where, however, the proposed division is to be accompanied by a change in the use of any part of the premises it remains to consider whether this will amount to a material change in the use of that part. In the present case, it would appear that the café and the motor coach booking office, which is in the nature of a ticket agency, are both shops as defined in the Town and Country Planning (Use Classes) Order, 1950, and, as the existing use of the whole premises and the intended uses of the parts proposed to be formed therefore fall within Class 1 of the Schedule to that Order, development is not deemed to be involved on account of the change of use by virtue of art. 3. The Minister understands that the building operations covered by the present application would entail only internal alteration of the premises. Thus, is seems that the proposal does not constitute development and the Minister accordingly decides that no planning permission is necessary."

[By courtesy of Messrs. Rowe, Watts & Wood, Solicitors, Ilfracombe.]

Library in Room of Dwelling-house

The following is an extract from the letter of the Minister of Housing and Local Government, dated March 4, 1952, following an appeal against the refusal of the Coventry City Council to consent to the use of the small back living room

of a house at Torrington Avenue, Coventry, as a lending library.

"The Minister notes that there is a lending library in the local shopping centre some 750 yards away. He does not, however, take the view that there is no room for another small library elsewhere in the neighbourhood and he is inclined to think that it should be possible for Mrs. Ives to operate a small library, such as she has decribed, to the public advantage in the room in question without appreciably affecting the character of the road. He accordingly allows the appeal to the extent that he permits the development for a period of two years from the date hereof subject to the conditions that the room shall not be used for any other non-residential purpose including any other purpose covered by class 1 of the Town and Country Planning (Use Classes) Order, 1950, and that the use shall be discontinued at the end of the permitted period.

"It will be open for Mrs. Ives to apply in due course for an extension of the permitted period and the Minister has no doubt that the council will consider such an application in the light of experience. I am to add that the Minister recognises that any proposal to use an additional part of the premises for the library or to establish a shop might involve appreciably different considerations."

[By courtesy of the Town Clerk, Coventry.]

Time Limit Conditions to Reduce Eventual Cost to Local Authority of Acquisition

The following is an extract from the letter of the Minister of Housing and Local Government, dated February 13, 1952, allowing an appeal against conditions imposed by the Buckinghamshire County Council in granting planning permission for the erection of a three-storey building, as an extension to existing shop premises at Slough.

"In granting permission the council imposed two conditions: the first limiting the permission to 30 years and requiring re-instatement at the end of that time, the second requiring that the building shall not be immediately connected to the sewer and that in the meantime arrangements for sewage disposal shall be to the satisfaction of the council. In their representations on the appeal the council have stated that the site is part of an area which they hope in the future to lay out as a town square; that such a feature is much needed in Slough and that this is the most suitable position for it: that much of the existing property is old and nearing the end

of its useful life. It was agreed that there are three substantial new buildings within the area and that the town square is unlikely to be laid out within the next 30 years. In the circumstances the Council were not able to include the town square in the development plan which is now before the Minister and in which the site has been shown as allocated for shopping purposes. The development plan deals with the future of the area for the next 20 years; the allocation would therefore remain for that period and the council had granted planning permission to Messrs. Marks and Spencer accordingly but considered it reasonable to impose a time limit of 30 years. It was admitted that the object was to reduce the eventual cost of acquisition and it was agreed that in requiring re-instatement they did not intend to demand rebuilding of the existing houses. The second condition was less important and could be dispensed with, as the building was not likely, in present circumstances, to be completed before the enlargement of the sewerage system.

"The Minister has carefully considered all the representations made on the appeal and it appears to him that the issue is a simple one whether it is reasonable to put a time limit on planning permission for development which conforms to reasonable planning requirement for the next 20 and possibly 30 years but which may have to be removed to make way for some other form of development at some date more than 30 years ahead. Where the character of the development is likely to be acceptable for 20 years or more, buildings of a substantial nature and in permanent materials must ordinarily be expected. The uncertainty about long term prospects of development at the present time makes it very difficulty to justify limited period permission for such buildings and in this case the permanent character of the building and the necessarily tentative nature of the Council's alternative proposals for the area make such a limitation inappropriate.

"The Minister has accordingly decided to allow the appeal and to discharge both conditions."

[By courtesy of the Clerk of the Buckinghamshire County Council.]

Extension of factory premises where planning permission required for only small part of the work

The following is an extract from the letter of the Minister of Housing and Local Government dated March 17, 1952,

allowing an appeal against the refusal of the Ipswich County Borough Council to permit the extension of existing buildings at Turret Mills, Turret Lane, Ipswich.

"It was stated on behalf of the appellants that the building was needed to improve the standard of the cereal filler manufactured in their premises adjoining the site; that in 1949 they obtained planning permission to increase the height of the building and to construct a new pitched roof and their present proposals were substantially the same externally, apart from the enclosure of the existing outside staircase and a further increase in the height of the building providing for an additional floor with additional doorways and windows. A licence for the work had been issued for £5,500, about £4,000 of which could be spent on works which did not require any planning permission, and that in any case they would carry out all the work which could be done without further permission.

"On your council's behalf it was stated that the development plan included proposals for an inner ring road cutting across the appellants' premises immediately south of the appeal site and for the enlargement and improvement of the adjacent bus station extending on to the appeal site.

"The Minister has consulted the Minister of Transport and considers it important that the council's proposals for the redevelopment of this area should not be prejudiced. It is also important that land and buildings which will not be redeveloped for a while should be effectively used meantime. Moreover much of the work which the appellants intend to carry out is internal and does not require planning permission. In these circumstances the Minister considers that it would be reasonable to allow them to carry out the additional improvements proposed which will enable the factory processes to be more efficiently organised and the building to be more fully used until proposals for the redevelopment of this area can be carried out. He has accordingly decided to allow the appeal."

[By courtesy of Wm. Scrivens, Esq., Barrister-at-Law.]

Conversion of garage to bungalow, between three-storey buildings

The Minister of Housing and Local Government has allowed an appeal against the refusal of Beckenham Borough Council to consent to the conversion into a bungalow of a detached

garage at Hayne Road, Beekenham. Permission was refused on the ground that the proposal would be incongruous with and detrimental to the amenities of the road.

At a local inquiry held into the appeal, the council stated that, as the garage was between two three-storey buildings, the bungalow could only be lit from the front and back. It was also contended that it was overshadowed by the main building and would present a shut-in appearance, and that it would compare unfavourably with other houses in the road.

The Minister is not convinced that these reasons were sufficient to justify refusal of permission. He considers that, if properly carried out, the proposal would cause no added detriment since the bungalow would be no more unsightly than the existing garage.

[By courtesy of the Public Relations Officer, Kent County Council.]

Erection of lock-up garages in residential area

The Minister of Housing and Local Government has allowed an appeal against the refusal of Bromley Borough Council to permit the erection of 20 lock-up garages, screened by a garden with trees and shrubs, on land at Chislehurst Road, Bromley.

Permission was refused not only because of possible injury to the amenities of the locality, but also because the site was scheduled for residential development in the draft development plan.

The Minister does not think that lock-up garages are necessarily inappropriate in a residential area. In the present case he considers that, screened by a garden with shrubs and trees, they would be preferable to the site as it now exists.

[By courtesy of the Public Relations Officer, Kent County Council.]

Use of premises as guest house, restaurant and club

The following is an extract from the letter of the Minister of Housing and Local Government, dated January 9, 1952, giving his decision on an appeal against the failure of the Watford Borough Council to give a decision upon an application for the use of the premises at Rickmansworth Road, Watford, as a guest house, restaurant and club:

" On behalf of your client it was stated that she purchased the premises in June, 1949, as a guest house, restaurant and club; the guest house having been in existence since 1946.

" The Minister notes that while the council have no objection to the use of the premises as a guest house, they strongly object to the use as a restaurant and club, as they consider such uses would be quite wrong in this residential area.

" The Minister sees no good reason for disagreeing with the views expressed by the council, and he hereby allows the appeal to the extent that he permits the use of the premises as a guest house, but refuses permission to use the premises as a restaurant and club."

[By courtesy of the Chief Planning Officer, Hertfordshire County Council.]

Erection of butcher's shop on site between two housing estates

The following is an extract from the letter by the Minister of Housing and Local Government, dated January 31, 1952, allowing an appeal against the refusal of the Lincoln City Council to grant planning permission for the erection of a butcher's shop:

" The appeal site is situated between two housing estates on the western fringe of Lincoln, and forms part of a triangular shaped plot of rough grassland about one-third of an acre in extent fronting a classified road accommodating the Co-operative Society's existing shop and a further shop. A site for a public house has been allocated on the adjoining land. The Co-operative Society propose to erect a single storey extension on the east side of their shop to accommodate their butchery department.

" The Minister notes that the present shop of the Co-operative Society was permitted by the council in 1929, when they contemplated that it would be in an area zoned for shopping development. The council have suggested that the society should seek the tenancy of one of the shops in the new shopping centre to the south, but have also said that they do not feel able to compensate the society for the loss of their present premises at the present time. In these circumstances the Minister does not consider that the extension now applied for can reasonably be refused. He does not consider that, in itself, it will materially affect conditions on Skellingthorpe Road.

" He has accordingly decided to allow the appeal and to grant planning permission for the erection on the site of a butcher's shop subject to the condition that the detailed siting and external appearance of the building shall be as may be

agreed by the council or, failing agreement, as shall be determined by the Minister."

[By courtesy of the Town Clerk, City of Lincoln.]

Temporary permission for caravan adjacent to cottages

The following is an extract from the letter of the Minister of Housing and Local Government, dated January 4, 1952, conditionally allowing an appeal against the refusal of the Swindon Borough Council to permit the placing of a caravan on land formerly the site of two cottages at Swindon.

"The Minister agrees with your council that this area should be redeveloped soon but he does not consider that a caravan will cause any harm on this site whilst the adjacent cottages remain. The Minister has, therefore, decided to grant a limited permission for the placing of a caravan on the site of Nos. 9 and 10 Cambria Cottages for three years from the date of this letter."

[By courtesy of the County Planning Officer, Wiltshire County Council.]

Set-back of offices, etc., for road widening and car park space

The following is an extract from the letter of the Minister of Housing and Local Government, dated November 15, 1951, allowing an appeal against the refusal of the St. Albans Borough Council to permit the erection of a three-storey building for use as a doctor's consulting rooms and offices on land at Victoria Street, St. Albans.

"At the inquiry, it was admitted on behalf of your council that the proposed use was appropriate to the area, which is intended ultimately to be redeveloped for business purposes, but stated that in view of the restricted site, the coverage was excessive. Your council were however willing to waive their objections on the grounds of excessive site coverage and detriment to amenities of nearby dwelling-houses, if the building was set back an additional five feet behind the present building line. This siting of the building would mean taking in much of the garden of No. 61 Lattimore Road.

"Your council's reason for requiring this further set-back was that ultimately they hope to widen Victoria Street by 19ft. on the south side, and in the meantime the forecourt in front of the building could be used for car parking. The Minister has consulted the Minister of Transport, and he is advised that the road widening scheme must be regarded as

a long term proposal, which will be put into effect gradually as and when redevelopment of the frontage properties is undertaken. The ultimate width of Victoria Street is not finally settled and the proposed 19ft. improvement line must be regarded as flexible.

" By the time the road improvement is carried out, it is reasonable to assume that the proposed comprehensive redevelopment of the area will have started and it will then be possible to provide access and parking facilities at the rear of the building. In the meantime, a 15ft. wide forecourt will accommodate four cars, and no larger number would be accommodated if the forecourt was extended by 5ft. The Minister is therefore satisfied that on traffic grounds, there is no objection to the proposed development.

" So far as site coverage is concerned, the Minister considers that any objection there may be would be increased by the set-back proposed by your council, but with regard to the proposal in its present form he considers that any objection on this score is outweighed by the advantages of developing this admittedly derelict site close to the city centre."

[By courtesy of the County Planning Office, Hertfordshire County Council.]

Installation of petrol pumps [1]

The following is an extract from the letter of the Minister of Housing and Local Government, dated February 7, 1952, allowing an appeal against the refusal of planning permission for the installation of two petrol pumps on land at Maidstone Road, Rainham, Gillingham, Kent.

" At the inquiry, it was claimed on behalf of the appellants that the installation of the petrol pumps was incidental to the use of the premises as workshops and would not be a material change of use requiring planning permission. The Minster is satisfied, however, that the installation of the pumps would be ' an engineering . . . or other operation on, over or under land ' and as such would constitute development for which planning permission is required. Accordingly he has gone on to consider the planning merits of the case."

" The site is bounded on the north by a petrol filling station and garage and the appellants are already carrying on the repair of motor-cars on their premises. The Minister does not consider that the installation of two petrol pumps would

[1] As to replacement of petrol pumps, see [1950] J.P.L. 723.

materially alter the present character of this part of Maidstone Road or materially affect the amenity of the nearby houses."

[By courtesy of Messrs. W. E. R. Randall & Sons, Surveyors, Auctioneers, Estate Agents and Valuers, Chatham.]

Erection of Garages and Dustbin Store at Rear of Block of Flats

The following is an extract from the letter of the Minister of Local Government and Planning, dated July 23, 1951, dismissing an appeal against the refusal of the Hendon Borough Council to permit the erection of ten garages and a dustbin store on land within the curtilage of Quadrant Close, Hendon.

" The Minister accepts that there may be a genuine need of more garages for the tenants of the flats but this, in his opinion, cannot outweigh the disadvantage of the proposal which would unreasonably reduce the garden area. He agrees with the council that this land should remain a garden for the benefit of the tenants. It seems, also, that the access from the site to the road is too restricted to serve a much larger number of garages than already exist. There is a possibility, moreover, of a more suitable site for additional garages being obtained in the vicinity. The Minister has therefore decided to dismiss your appeal.

" With regard to the proposed dustbin store, the Ministry notes that the local authority have already stated that they have no objection to this proposal as such. It will, however, need reconsideration as to siting and design as a structure unconnected with the proposed garages, and it is suggested therefore that you should make it the subject of a fresh planning application to the council."

[By courtesy of the Town Clerk, Borough of Hendon.]

Motor Repairs and Cellulose Spraying

The following is an extract from the letter of the Minister of Local Government and Planning dated August 30, 1951, following an appeal against the condition imposed by the Rickmansworth Urban District Council in granting permission for the use for cellulose spraying of premises at New Road, Croxley Green.

" It was claimed on behalf of the appellant that the premises have been used continuously for general industrial purposes since before the date on which the area became subject to planning control. This was accepted on behalf of your council and the Minister considers that no material change

of use is involved in using the premises for motor repairs and that consequently no planning permission is necessary for this use.

" So far as cellulose spraying is concerned, however, the Minister agrees with your Council that, even on the comparatively small scale contemplated here, this process constitutes a material change of use requiring planning permission, and he has therefore dealt with this proposal on its planning merits. He accepts that, despite the presence of a few small industries, mostly dating from pre-planning control days, the area is predominantly residential. He agrees with your council that in these circumstances it would be undesirable to allow the permanent use of the premises for cellulose spraying.

" In order that undue hardship shall not be caused to the appellant, however, the Minister considers that he should have a little more time in which to find alternative premises in which to carry out cellulose spraying.

" The Minister accordingly allows the appeal to the extent that he hereby permits the use for cellulose spraying in the more westerly of the two sheds situated at the rear of 48 New Road, Croxley Green, for a period of twelve months from the date of this letter, subject to the condition that the use of the shed for this purpose shall be discontinued at the end of that period."

[By courtesy of the County Planning Officer, Hertfordshire County Council.]

Illumination of Signs on Cinema

The following is an extract from the letter of the Minister of Housing and Local Government dated December 3, 1951, dismissing the appeal against the refusal of Cambridge County Council to permit the illumination by neon lighting of two existing signs on land situate at the Tivoli Cinema, Chesterton Road, Cambridge.

" The Minister observes that the signs, which would be illuminated are displayed on the upper parts of both flank walls of a cinema fronting on to a main road. He further observes that the immediate vicinity of the cinema is mainly commercial in character, but because of their high positions, both signs are visible from the tree-lined banks of the River Cam. In addition the sign on the western side of the building faces towards pleasant houses and open land between the main road and the river.

" In the Minister's view, the display of illuminated signs in

these positions on the cinema would introduce incongruous features into the pleasant localities adjacent to the site, and would, therefore, be prejudicial to amenity.

" The Minister accordingly dismisses the appeal."

[By courtesy of the County Planning Officer, County of Cambridge.]

Extension of Builders' Merchants' Yard

The following is an extract from the letter of the Minister of Housing and Local Government dated December 14, 1951, conditionally allowing an appeal against the refusal of the Hendon Borough Council to permit the use for the purpose of an extension to an existing timber and builders' merchants' yard, of land situated at Highfield Road, Golders Green, N.W.11.

" Permission was refused on the grounds that the proposed development would involve the extension of an industrial user in a predominantly residential neighbourhood, that it would be prejudicial to the residential amenities, and that it would not conform with the development plan proposals for the area.

" The Minister understands that a proposal to redevelop this corner site, including the land under appeal, for residential purposes was rejected by the council because they intend to acquire compulsorily part of the site containing the derelict houses for the purpose of erecting public conveniences. There appears little likelihood that the east side of Highfield Road will be redeveloped for residential purposes within the foreseeable future, and the Minister is of opinion that, in all the circumstances, it would be reasonable to allow the appellant's proposal provided that the additional land is used solely for storage.

" The Minister has accordingly decided to allow the appeal and to grant permission for the extension of the timber yard as proposed, subject to the condition that the site under appeal shall be used for storage purposes only."

[By courtesy of the Town Clerk, Hendon Borough Council.]

Erection of Ice-cream Kiosk on Forecourt of Seaside Town [1]

The following is an extract from the letter of the Minister of Housing and Local Government dated March 6, 1952, following an appeal against the refusal of the Rhyl Urban

[1] This decision may be contrasted with the decision to the opposite effect given at [1952] J.P.L. 57.

District Council acting on behalf of the local planning authority, the Flintshire County Council, to permit the retention of an Ice-cream Kiosk, erected on the forecourt of premises at No. 32 West Parade, Rhyl.

"You stated that permission, which has now expired, was obtained from the local authority under the Rhyl Urban District Council Act, 1935, to erect an Ice-Cream Conservatoire on the forecourt of your premises and subsequently, at the request of the local Sanitary Authority, the erection was enclosed for reasons of Public Health and Hygiene. You were not aware that planning consent was also required.

"The Minister has considered with care all the facts and representations before him. The Kiosk stands in front of your Amusement Arcade and Cafe premises where ice-cream is sold. Apart from two other Kiosks of long standing some little distance away, the forecourts in West Parade are clear of such structures. The footpath adjoining the site of the Kiosk is comparatively narrow and, in the summer season, easily congested.

"The Minister has therefore reached the conclusion that the Kiosk on the forecourt of your premises is likely to lead to unnecessary congestion of the footpath during the summer months, and that he must support the Council's policy of keeping the forecourts in West Parade free of structures and their action in refusing permision for the retention of the Kiosk."

[By courtesy of the Clerk of the Flintshire County Council.]

Erection of Double-sided Reflex Sign

The following is an extract from the letter of the Minister of Housing and Local Government dated February 16, 1952, following an appeal against the refusal of the Cambridgeshire County Council to permit the display of a double-sided reflex sign, measuring 3ft. 6ins. by 2ft. 3ins., the underside being 7ft. 9ins. above ground level, on land situate at the Comfort Cafe, Little Abington, Cambridgeshire.

"The Minister observes that the sign, which has been erected in a somewhat ungainly manner without the consent of the local planning authority, is being displayed beside a tree-lined trunk road in a rural area. He notes that the sign is sited in front of, and relates to, a transport cafe which is not readily visible to drivers approaching along the road and which, at present, can only be identified by an

existing direction sign, which is at a nearby road junction, and whose continued display may be challenged by the local planning authority.

"In the Minister's view, the display of this one small sign relating to the cafe would not, in itself, be prejudicial to the amenity of the locality, nor a danger to public safety, provided its height above ground level were reduced and the reflectors permanently obscured or removed.

"The Minister accordingly allows the appeal and grants consent for the display of the sign sited in its present position, subject to the following conditions:—

(i) the highest point of the sign shall not exceed six feet from ground level;

(ii) the means of reflection are removed or permanently obscured;

(iii) the display of the sign shall be permitted for three years.

"This letter is issued as his decision in the appeal.

"I am to add that by reason of Regulation 20 (6), as amended, this decision has effect as if it were the decision of the local planning authority and your attention is drawn to Regulation 18 (5), also as amended, which applies to all decisions given by the local planning authority."

[By courtesy of the County Planning Officer, County of Cambridge.]

Erection of Esso Identification Sign at Garage

The following is an extract from the letter of the Minister of Housing and Local Government dated March 13, 1952, following an appeal against the refusal of Cambridgeshire County Council to permit the display of an advertisement sign on land situate at a garage in High Street Rampton, Cambridgeshire.

"The Minister observes that the proposed sign would be displayed without illumination in the forecourt of a garage facing the green in a pleasant village locality. He also notes that there are two advertisement globes being displayed adjacent to the garage, one on a telegraph pole, and the other on the front elevation of a cottage used as a post office.

"The Minister's view is that the display of the proposed sign would be out of keeping with the nature of the locality and for that reason would be prejudicial to amenity."

[By courtesy of the County Planning Officer, County of Cambridge.]

Correspondence

To the Managing Editor,
Journal of Planning Law.

Sir,

Function of the Minister in relation to Control of Advertisements

Mr. Desmond Heap, in his learned article "Land Planning and the Executive," in your issue of March, 1951 (*ante*, p. 124), attempts to justify the action of the legislature, particularly in town planning legislation in giving certain powers to the Executive which formerly belonged to the Judiciary. His words are "Rightly or wrongly (and whether it is right or wrong is not for the Executive but for Parliament to say) the Minister is the sole judge of policy; the Act of 1943 clearly makes him so."

It is submitted that even if Parliament intended to make the Minister "the sole judge of policy," the intention is entirely irrelevant, in so far as the Control of Advertisements Regulations, 1948 (S.I. 1948, No. 1613), and ss. 31 and 32 of the Town and Country Planning Act, 1947, are concerned.

S. 31 authorises the Minister to make regulations for restricting or regulating the display of advertisements, so far as appears to the Minister to be expedient in the interests of amenity or public safety; and reg. 4 of S.I. 1948, No. 1613, expressly declares that the powers conferred by the regulations with respect to the grant or refusal of consent for the display of advertisements, and to the revocation or modification of such consent, shall be exerciseable only in the interests of amenity or public safety.

The legislature clearly appreciated that in matters of amenity and public safety differences of opinion could arise, and made provision for the settlement of disputes which might arise by giving the Minister power, in any regulations he may make, to provide that any appeal from the decision of a local planning authority on an application for their consent under the regulations shall lie to an independent tribunal, constituted in accordance with the regulations, instead of to the Minister (s. 31 (2)).

It is submitted with the greatest of respect that it was never intended that the Minister's functions in hearing these disputes was "to be the sole judge of policy," but to adjudicate on matters concerning only amenity and public safety, and so far as the Control of Advertisements Regulations are concerned, he is not entitled to make policy considerations paramount. Mr. Heap says "The Minister is not there to dispense justice but to carry out a policy." The legislature certainly regarded the Minister as an alternative tribunal to an independent tribunal; therefore, it is submitted, he should function as one and "dispense justice" on considerations of amenity and public safety, and not be a judge of policy. In fairness to the Minister he claims to decide on grounds of amenity or public safety, and every decision he gives introduces one or the other of these elements as the reason for his decision.

But Mr. Heap's contention that the Minister can be governed by policy considerations is not well-founded and should not be allowed to pass unchallenged, so far as s. 31 is concerned. He is clearly regarded as a tribunal to settle disputes between parties.

Nor is Mr. Heap's conclusion that the Minister is not obliged to follow the report of his inspector if policy considerations require otherwise, when matters of amenity are under consideration. Amenity is a quality which is not definable: see p. 139 of the Progress Report of Town and Country Planning, 1943–1951, where it is stated "Each person's idea of amenity inevitably depends upon his individual taste; what is disagreeable to the mind, feelings or senses of one seems harmless to another."

If the inspector, who has seen the locality under review, reaches a decision, on the ground of amenity or public safety, how can the Minister, who has not seen the locality, decide otherwise. Common sense, as well as justice, demands that the person who has inspected the locality should decide whether or not it has amenity. The position is much worse than Mr. Heap indicates, for no one believes that the Minister himself decides these appeals—there were 709 during 1951. Therefore, the ironical situation is reached whereby one official, who has seen the locality, reaches a conclusion, and this is overridden by another official, who has not seen the locality. Mr. Heap suggests this is carrying out a policy. What policy?

Yours faithfully,

W. J. Leaper,
General Secretary,
Solus Outdoor Advertising Assocn., Ltd.

Strand,
London, W.C.2.

To the Managing Editor,
Journal of Planning Law.

Sir,

Compulsory Acquisition: Fire Insurance

May I suggest in addition to the suggestion at [1952] J.P.L. 209, that it is also advisable for the owner to keep his insurance policy in force since under s. 5 of the 1919 Act (as amended) there is power to withdraw a notice to treat.

As regards repairs, would it not be more correct to say that before the compensation has been determined and before entry, the acquiring authority is not liable for repairs and that as there is no quasi-contractual position the owner can carry out repairs or not as he wishes, except in so far as the repairs are enforceable under the Public Health, Housing, or other Acts, when he will be liable.

Yours sincerely,

W. A. Leach.

Holborn Bars, E.C.1.

To the Managing Editor,
Journal of Planning Law.

Sir,

Development Charge by Instalments

We submit herewith for publication if you consider it desirable an extract of a letter written by the Central Land Board to one of our principals on the question of payment of development charge by instalments.

This is the first definite directive which we have seen from the Board stating what they will accept in the nature of instalments and security therefor, and in particular the fact that a second charge on the land will be accepted provided the first charge is held by a building society, is new to us.

Yours faithfully,

Bond, Pearce, Eliott & Knape,
Solicitors.

Plymouth.

Central Land Board,
10, Apsley Road,
Bristol, 8.
3rd April, 1952.

Dear Sir,

Regarding your request to pay the development charge by instalments, the Board otherwise than in very exceptional cases, will however accept the payment of development charge by instalments only under the following conditions and then only if it is clear to them that hardship to the developer would otherwise be caused.

The charge remaining to be paid must be secured to their satisfaction. They will therefore expect the developer to offer adequate security. It is not possible to specify all the forms of security which the Board would consider adequate but, by way of example, the following are mentioned, namely:—Certificates of government guaranteed stocks or bonds; a first mortgage on the land; an insurance policy on the life of the developer where the surrender value of fully paid up value is adequate; a second charge on the land to be developed where the first charge is held by a building society. The amount will be recovered by equal instalments payable at intervals of mixed charge and interest spread over the period.

Interest will be charged on the balance of the development charge remaining unpaid at a rate dependent on the nature of the security. The developer will be advised by the Board of the particular rate of interest applicable when the security offered has been considered by them. The rates charged, however, will ordinarily be not greater than the commercial rates for loans bearing a similar degree of risk.

You are, therefore, requested to state:—

(a) the minimum period within which you will be able to pay the amount of development charge outstanding and
(b) what security you are able to offer the Board.

(c) the reasons why you cannot on the basis of the security you are able to offer, obtain a loan for the payment of the development charge from the ordinary commercial sources.
(d) a firm date by which you would undertake to pay off the balance.

The Board cannot give consent for the development to proceed until the balance of the charge has been paid or adequately secured.

Yours faithfully,

(Signed) ————————
for Regional Manager.

Messrs. Bond, Pearce, Eliott & Knape,
1, St. Lawrence Road,
Plymouth.

Book Reviews

Urban Estate Management. Second Edition. Cumulative Supplement to October 31, 1951. By W. A. Leach, F.R.I.C.S. (The Estates Gazette, Ltd. 1952. 86 and (index) 4 pp. Price with main volume, 57s. 6d.; if main volume already purchased, 10s.)

This is a supplement to the main work, the second edition of which was published early last year, and reviewed at [1951] J.P.L. 344. It consists of additional notes, arranged in the order of the main work, and with page references thereto.

The supplement is for sale only with the main volume, but those who have already purchased this may obtain the supplement by sending to the publishers the form at pp. 683–4 of the main volume.

Practical Points

All questions for consideration should be addressed to "The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of replies.

360. *Builders' near ripe land—sale*

In Practical Point No. 348 (*ante*, p. 117) it is stated that "The land should be sold at its 'existing use' value ignoring classification as near ripe (Press Notice C.L.B./9). Alternatively, it may be sold at a price inclusive of development charge provided the charge has been determined."

The first recommendation will not appeal to any owners of near ripe land who will wish to collect as much as possible in cash rather than in Government Bonds.

In recommending the second alternative, a word of warning seems necessary. If the vendor indemnifies the purchaser from *any* development charge, he may be taking upon himself a heavy responsibility for the future. Any extensions beyond those normally permitted free should be the responsibility of the purchaser.

The vendor should therefore instruct his solicitor to make it clearly understood that his liability is limited to the amount of development charge payable in the first instance. [W. R. D. & P.]

ANSWER

Certainly the indemnity against development charge should be restricted to any charge assessed in respect of the erection of a house on the land—if possible, restricted further to that assessed on the erection of a particular house, or a house of a particular type. This is, however, a matter which ought to be capable of being left to the solicitor's discretion; he ought not to need his client's express instructions on a technical point such as this. [J. F. G.]

361. *Development charge — block of flats — enlargement tolerances*

(a) Is a block of flats one "building" within one curtilage, or is each flat a separate curtilage?

(b) What enlargement tolerances are permitted in respect of a block of flats?

(c) Must the tolerance of each flat be used to extend that flat only, or could additional flats be created?

(d) Could the tolerance be expended on the erection of a block of lock-up garages within the main curtilage of the block of flats? [J. P.]

ANSWER

(a) There would be a curtilage to a block of flats but not to any individual flat in the block.

(b) and (c) The specific tolerances of 1,750 cu. ft. under the Third Schedule or 7,500 cu. ft. under paras. 1 and 2 of the Development Charge Exemptions Regulations must (where they exceed the 10 per cent. level) be applied to each individual flat. The general tolerance of 10 per cent. would seem to be equally applicable to the building as a whole, *i.e.*, a block of flats might be rebuilt with 10 per cent. enlargement as a greater number of flats, or the existing building might be enlarged by 10 per cent. by adding extra flats. Note that the enlargement permission under class I of the General Development Order does not apply to flats (*vide* definition of "dwelling-house" in art. 2 thereof).

(d) The general tolerance of 10 per cent. could be so expended: s. 112 (2) of the Act and para. 1 (*a*) of the Exemptions Regulations. [W. A. L.]

362. *Development charge—Third Schedule tolerances*

The Third Schedule building tolerance in respect of a light industrial factory have been exhausted since the appointed day, and only a portion of the surrounding land is used for open storage and similar purposes. The remaining land within the curtilage has never, at any time, been put to any use whatsoever, largely due to its unlevel and pitted state.

Can the whole of this remaining land be used for any purpose incidental to the main factory without involving development, by virtue of Ministry Circular No. 67?: or does only that portion which represents one-tenth of the surrounding land now so used escape development charge by virtue of para. 7 of the Third Schedule? [J. B. H.]

ANSWER

If the land is within the curtilage of the factory and has not been severed (*e.g.*, by claiming voids for rating) I do not think for incidental purposes its use involves development, although any "operations" to adapt the land would, of course, require planning permission. The fact that a garden of a

dwelling-house had never been cultivated on the appointed day would not make permission necessary for its subsequent cultivation. If the land had hitherto been used for some other purpose whilst within the curtilage the position would be different. [W. A. L.]

363. *Planning permission—right to inspect plans of other development.*

A client of ours for some time now has been trying to purchase a small plot of land immediately adjoining his own land and dwelling-house, but the owner of the small plot will not sell it to our client. The owner of the small plot of land has recently had plans passed for the erection of a small house. No approach has been made to our client by the Planning Committee or the Planning Officer for his comments on the suggested plans, nor has he been consulted at any time, nor been given the opportunity of inspecting the plans. In fact, he did not know the plans for the house had been passed by the Planning Committee until informed by a friend in the street.

As one who is concerned to have some idea on the specification of the house proposed to be erected next to his own he has personally asked the Planning Officer if he might be allowed to see the approved plans, but has been refused. We, ourselves, on his behalf, have similarly been refused.

We are not sure about the point, but would expect that in the circumstances our client had the right to inspect the plans. If he has such a right would you please tell us what the authority is? If he has no such right has he a right to be informed of the presentation of the plans before permission is granted by the Planning Committee? [N. & A.]

ANSWER

A private individual has no right to inspect a particular application made to, or permission granted by, a local planning authority, but it seems that he can inspect the register required to be maintained under s. 14 (5) of the Act, whether or not he is interested in the property to which any particular entry relates. Further than the register, however, he is not entitled to go; it will be noted that an application has to be registered within 14 days, and usually before it is dealt with: see art. 12 (1) and (4) of the General Development Order.

There is a statutory right to inspect the authority's minutes (Local Government Act, 1933, s. 283), but a mere

mention of the plans in the minutes can hardly be said to have incorporated the plans with the minutes [J. F. G.]

364. *Planning permission for use not in fact commenced—Change within Use Class*

A building was used on the appointed day as a cinema. The owner obtained a 10-year planning consent for reconstruction and use as a warehouse for storage of electrical material, and development charge was assessed at nil. But this proposed user never took place.

The owner now wishes to let to a wholesale builders' ironmonger. Therefore:—

1. Is this new proposed user in the same class as the previously proposed user?
2. Assuming it is, then, as a general principle, does permission to use for a particular purpose cover permission to use for another purpose in the same use class?

Although it is in order to change the use on the Appointed Day to another use in the same use class without permission, we are not clear whether it is lawful to change from a subsequently permitted use which was at no time an actual use. [W. P. H. & H.]

ANSWER

It is generally accepted that a permission to carry on a use in a Use Class gives entry to any and every use within that class. If the planning authority wishes the permission to be more restrictive it may add a condition or restriction limiting the use to one or more specified uses within the class, or excluding from the permission one or more specified uses comprised in the class. See *Crisp from the Fens* v. *Rutland C.C.* (1950) 1 P. & C.R. 48.

The questioner does not say when the permission was granted, so that at the time of the granting the authority may only have been visualising use within Class XI of S.I. 1948, No. 954. However, the benefit may now be taken of Class X of S.I. 1950, No. 1131, and the answers to the specific questions are (assuming that there are no conditions to the permission restricting the scope of use):—

1. Yes.
2. Yes.

It is, of course, assumed that the words "let to a wholesale builders' ironmonger" means that the premises are to be used as a "wholesale warehouse." [W. A. L.]

365. *Planning permission—Reversion to former use after temporary permission*

A is the owner of a house situate in an essentially residential area and which was used as a private residence until a planning consent under the Town and Country Planning (General Interim Development) Order, 1946, was granted by the London County Council to B, the tenant, for the use of the premises as a convalescent home for a limited period of seven years from February 1, 1948. So far as it is known, the premises were so used on July 1, 1948. Such user has since ceased by reason of the removal of B from the premises and the property is now vacant.

A is now selling the property to C, who is a dental surgeon, and who proposes to reside on the premises but later may use one or two rooms for his professional purposes.

Prima facie, it would appear that such a consent is permissive and not mandatory and therefore there is no reason why the user the subject of permission should not be discontinued. On that basis it is contended that the premises will revert to the use previous to the grant of the planning consent, that is to say for residential purposes, and that such reversion would not constitute development.

The London County Council contend that the authorised use for the purpose of the 1947 Act is the use the subject of the planning consent and that in fact if it is now desired to use the premises for residential purposes prior to the expiration of the seven-year period, planning permission must be obtained and development charge determined. Which of these views is correct? Alternatively by the joint effect of s. 76 (1) and s. 18 (5) a use under a pre-Act limited period permission. [S. A. & C.]

ANSWER

I think that this matter is most probably of academic interest because even if the L.C.C. obtain an application for planning permission, they could hardly refuse the application and I cannot see the Central Land Board attempting to levy a development charge. But I do not think that this need arise. It appears to come within s. 12 (5) (*a*) as the resumption of a normal use. If you applied for a limited consent the position is even stronger, but in any case the L.C.C. by their decision made it temporary and I cannot see that it alters the nature of the use if you make it even more temporary. Alternatively the previous use may be resumed as a result of the joint effect of s. 76 (1) and s. 18 (5). [R. P. C.]

366. *Planning permission — Unfinished buildings — Land in areas of two planning authorities*

We act for estate developers, one plot of whose estate is partly within the boundary of the rural district council and partly within the boundary of the city council.

In May, 1948, planning permission was given by the city council but no permission was obtained from or sought from the rural district council. Footings were dug prior to July 1948, and the Central Land Board certified on form D.5A that no development charge would be payable in connection with the erection of these dwelling-houses. No further development has taken place since the footings were dug, and it is now shortly desired to proceed with the erection of these dwelling-houses.

Inquiries have now revealed that planning permission was necessary from both councils, and it has been suggested that the planning application should be renewed with the city council and the acquiescence of the rural district council should then be obtained. It would seem that this action would cancel the planning consent in May, 1948, and so invalidate the certificate by the Central Land Board. Your views on the position arising would be appreciated. [W. & F.]

ANSWER

Form D.5A is normally only issued when the district valuer has indicated to the Central Land Board that on consideration no charge is payable. If the same development is proposed, the fact that a new planning permission is required will not affect the position.

One point that troubles me is that the city council should have given permission for development outside their area. Their consent will only remain good for the land within their area although I presume the district valuer had regard to the whole development. When future plans are submitted to the county council the whole facts can be given, and as work has been carried out in pursuance of the permission, the consent if given can include provision for the retention of works already carried out. If consent is refused and this is not reversed by the Minister the development must be limited to the city area.

If the footings were accepted by the Central Land Board as unfinished buildings, this information would normally be given by letter, not on form D.5A. The position with regard to unfinished buildings is not dependent on planning permission and of course the preceding paragraph would not apply. [R. P. C.]

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"Planning Law" Notes

The Inter-Departmental Committee set up in 1947 to consider the desirability of rating site values, has now presented two reports. The majority report, signed by the Chairman and five other members, is against the adoption of any scheme of site value rating, but a minority report signed by three members considers that such a scheme is practicable and desirable, and that the arguments in favour of it are unimpaired by the effects of the legislation of 1947. See *post*, p. 335.

The Kent County Council have completed a survey of the winter quarters occupied by gipsies and other "travellers" in the county. It was ascertained that in February last, 270 families comprising about 1,050 persons were living in "two or more family" camps, of which there are 18 in the county. The state of the camps varies widely. A piped water supply is available at the larger camps, but anything better than the crudest forms of sanitation is exceptional.

The Planning Committee is inviting the local authorities' associations in Kent to discuss problems connected with the choice or approval and control of any sites for winter settlements which may be retained or provided.

The Lands Tribunal have allowed another appeal against a determination of the Central Land Board for the purposes of a claim on the £300 million (*post*, p. 353). The only previous cases in which such appeals have been successful were the two Prudential Assurance Company's cases, noted at pp. 160–161, *ante*.

In the course of their decision the Tribunal strongly emphasise the importance of parties complying with rule 31 (4) of the Lands Tribunal Rules, 1949, in order that other parties may have a proper opportunity to consider any valuation of land which is to be submitted in evidence.

The Tribunal's decision also contains some strong comments apropos the proper method of valuation of property such as sports grounds.

The Minister of Housing and Local Government, Mr. Macmillan, in a speech at Manchester on April 19, said that development charge was one of the major obstacles to real development today. He hoped to find a solution to the problems set by the working of the Act of 1947, but it was not easy. He also hoped "to have some proposals ready for the next session of Parliament. That means, however, more than a year before they can become law. Meanwhile, we must press on, undeterred and undismayed."

The Chartered Auctioneers' and Estate Agents' Institute have published and submitted to the Minister of Housing and Local Government a 16-page memorandum on the amendment of the Rent Restrictions Acts.

The Council of the Royal Institution of Chartered Surveyors have decided to inaugurate a new town and country planning division of the Institution's examinations.

In devising the new syllabus, the Council have aimed at developing adequately the skills of valuation, estate management and land administration in relation to planning. They have not attempted to produce "all-round planners," since they believe that a basic qualification can do no more than ensure that a specialist can apply his own technique to the planning process, and surveying candidates who wish to acquire additional knowledge of architecture, engineering and other professions concerned with planning will have to do so at the post-graduate stage.

The subjects for the intermediate examination include two papers on "Town and Country Planning (History and Principles)—Typical Subject" and one on "Town and

Country Planning (Law and Procedure)." The final examination includes two papers on "Town and Country Planning Practice—Typical Subject."

A note in the *Local Government Chronicle* for April 19 states that an agreement has now been reached between the Central Land Board and the Manchester Corporation with regard to development charges on the Wythenshawe estate.

The greater part of the land was acquired by the Corporation before the Act of 1947, and was exempt from development charge under s. 82. Other lands in course of acquisition are being acquired at existing use value, but would not be exempt from development charge, and the Corporation would have been liable to pay the full development value in respect of industrial, shop, and other profitable uses, without being able to take into account losses incurred where sites were used for less valuable purposes. Further, no account would be taken of the benefit of expenditure on parkways and other amenities, which could not be attributed to particular sites, and the assessment of separate charges would have been extremely complicated.

In these circumstances the Central Land Board accepted that there should be a special basis for development charge, preferably in the form of a single global sum. There were several possible methods of assessing such a global charge, each resulting in a different amount, but the Board have now agreed to the assessment being on the basis of the amount estimated to have been saved by the Corporation by the purchase of the part of the land acquired at existing use value under the Act of 1947.

In a decision noted at pp. 350–1, *post*, the Lands Tribunal decided that the Tribunal has no jurisdiction to assess compensation for compulsory acquisition otherwise than in accordance with the relevant statutory provisions, even if requested by the acquiring authority to assess it on some basis more favourable to the claimant.

In the particular case, the question in valuing a leasehold interest was between the provisions of the Acts of 1944 and

1947. The valuation under the normally less favourable provisions of the 1947 Act, which were held to apply, was however assisted by the fact that the acquiring authority were the owners of the freehold interest and could be expected to pay a substantial price "in order to obtain early possession of the land."

By a happy chance, this value amounted to the same value as the land would have had on the 1944 Act basis of valuation —notwithstanding that possession had, apparently, been obtained by the authority some 10 months before the date of the notice to treat.

Development Charge Set-off

It is understood that where a developer has an agreed claim for loss of development value the Central Land Board will in future accept, in payment of development charge, a charge on that claim as security of an amount not exceeding 80 per cent. of the face value of the claim. Only the balance of the development charge will become immediately payable.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the MANAGING EDITOR, *Journal of Planning Law*, 3 CHANCERY LANE, LONDON, W.C.2. *Every attempt will be made to return drafts or unsuitable copy, but no guarantee can be given in this respect. Books for review should be sent to the Publishers at the above address.*

Where Caravans Rest

[*The following article is reprinted by kind permission of the publishers of The Times, in which newspaper it was printed on April* 18, 1952.]

County planning authorities in many parts of England are disturbed at the increasing use of caravans as permanent dwellings, and at the growing number of caravan sites that have become more or less permanent settlements. This development is, in many cases, illegal, but cannot always be checked because the provisions of the Town and Country Planning Act empowering county planning authorities to prevent it cannot always be enforced. Many counties have formulated plans for dealing with the problem but most of them realise that these plans cannot become really effective until houses become more plentiful.

The expansion of built-up areas is no more than a local solution. In Middlesex, for example, the number of caravan sites has ceased to increase because there are now so few open spaces left in this small county, and the planning authority is at least able to prevent new sites from springing up. On the other hand, Hertfordshire receives many caravan dwellers simply because it joins Middlesex and is one stage farther from the metropolitan area.

Surrey has to meet the difficulty of caravan dwellers in its worst and most acute form, and sees little hope of the problem being easily solved. Kent faces a problem almost as large in scope as that of Surrey but greatly complicated by a large proportion of its caravan dwellers being "travellers." Nearly every county in England is affected in varying degrees, and the problem is said to be even worse in Lancashire, and in the area surrounding Birmingham, than it is in the counties near London.

Gypsies in Kent

In Kent the county planning authority has embarked on a survey of its caravan population, which, it is expected, will be completed in a few weeks' time. The Ministry of Local Government and Planning has given the county some assistance with this survey because the Ministry feels that it may be of value in dealing with the matter throughout the country.

Accordingly, the Kent survey is usually referred to as a "pilot" survey. The term is not wholly agreeable to other counties, many of which have already made surveys and long ago reached the conclusion that the question will eventually have to be dealt with by the central Government rather than by local authorities.

The Kent survey was decided on last November because the absence of properly controlled sites on which gypsies and other travelling caravan dwellers could be accommodated had led to their using unauthorised sites which were unsuitable from the planning point of view. The purpose of the survey is "to assess the size of the problem and distinguish between the needs of the various types of persons requiring accommodation." The difficulty had by last November assumed some urgency because several families of caravan dwellers had been evicted from Belvedere Marshes, a huge settlement in the Erith area, and because another large settlement known as Corkes Meadow at St. Mary Cray will soon be taken over by the London County Council for industrial development.

It is highly probable that the Kent county planning authority will recommend that five publicly owned sites be established for their "gypsies and other travellers"—two in the Greater London area of west Kent, one in mid-Kent, and two in east Kent. Somewhat similar proposals have been made by most counties: the difference is that in this Kentish survey—the pilot survey—emphasis is laid on "gypsies and other travellers" while elsewhere it is thought of more as that of "residential caravans."

Gypsies, even in Kent, create a small part indeed of the problem, for it is generally agreed that the genuine nomadic gypsies live as a camping community in a quite decent way. They have, moreover, many defenders of their way of life and public sympathy is quickly roused if it is thought that real gypsies are being "harried" or unduly interfered with by authority. Unfortunately, much of this sympathy is mistakenly extended to the "other travellers" within the Kentish survey. They are, for the most part, people accustomed to living in houses but resorting to the caravan life—some willingly, some unwillingly—for a variety of reasons.

Deplorable Living Conditions

In Surrey very few of the caravan population in large settlements can properly be described as travellers. On many

of the sites living conditions are deplorable and some people even advocate controlling the manufacture and sale of caravans as the only effective remedy. Their argument is that people who find it impossible to obtain a house after years of searching and waiting are easily persuaded to buy a caravan and to set it up in a field alongside other caravans at a weekly rent of about 15s. This school of thought maintains that the unrestricted sale of caravans provides, in effect, an easy way of evading restrictions on house building, while restrictions on caravan sites have been evaded in all sorts of ingenious ways.

Surrey County Council has drawn up a standard set of conditions to be applied by district councils to all future permissions granted for the use of land as caravan sites for permanent and semi-permanent occupation; it has urged all district councils to acquire and control sites for the re-grouping of caravans improperly sited and to take all possible steps to bring existing caravan sites up to the standard conditions; and it has also decided that, on land which it controls, no new sites shall be approved, except those essential for re-grouping.

Similar plans have been made in other counties, but the pace at which such plans come to fruition is invariably slow. Compounds in the New Forest which are occupied by "squatters"—they are not genuine nomadic gypsies—were condemned by a departmental committee as places that "hardly reach the standard of the Stone Age." That judgment startled the conscience of the nation when it was published in 1947, but today the compounds remain exactly as they were at that time.

Buildings in Mixed Uses

By W. A. Leach, f.r.i.c.s.

Questions arise as to what constitutes a material change of use where a building is occupied for the purposes of more than one use. Many of the issues involved can be studied by taking the case of a caretaker's residential quarters in an office building.

(A) Para. 7 of Sched. III

This paragraph provides that where on the appointed day a person occupied a building for more than one use, any such use may be extended by 10 per cent. of the cube of the part of the building then applied to that use without liability to development charge.

(a) *Building in which the landlord does not occupy office accommodation.*

It has sometimes been suggested that there is no loss of development value in the caretaker's quarters since, having control of the building generally, the landlord could be regarded in a broad sense as the occupier of the whole and extend the cube of office use up to 10 per cent. into the caretaker's quarters.

The landlord is not an occupier of the offices and this interpretation has no substance in law; this now seems to have been accepted and the suggestion is no longer being encountered.

(b) *Building in which the landlord occupies office accommodation.*

In these cases para. 7 of Sched. III has been pursued on the footing that the landlord, being an occupier of office accommodation in the building, could use the caretaker's quarters as offices up to a cube equal to 10 per cent. of that of the offices of which he (the landlord) is the rateable occupier.

The first objection to this is that by s. 119 (1) of the Act "building" includes part of a building. If the landlord has

selected a part of a building as the unit of claim, that part is the " building " which has to be considered. That the landlord occupies another " building " is immaterial to the claim since para. 7 of Sched. III is available only within a building and not to uses within different buildings. (*Cf.* art. 3 (2) of the Use Classes Orders.)

An answer to that has been there is still no loss since if a change of use were contemplated there is a valid argument for avoiding development charge; therefore, the restricted value of the caretaker's quarters as a separate building would not in fact be less than its restricted value as part of a larger building. However, in terms of Part VI the restricted value cannot look to any value beyond that due to the existing use and Sched. III tolerances, and para. 7 of Sched. III does not apply to the unit of claim viewed as a separate unit. To hold otherwise is to defeat the claimant's right to select the unit of claim as laid down in s. 60 (4). This view is, of course, just as applicable when the landlord occupies an entire edifice in which a part is a caretaker's flat and the whole of the remainder the landlord's offices, as where the landlord's office forms only a portion of that part of the edifice in use as offices.

The landlord's view is even less assailable when the offices he occupies and the caretaker's quarters are not contiguous, *e.g.*, a ground floor office and fourth floor quarters. In such a case they would seem to be just as much separate buildings as if they were at the opposite ends of a street.

(B) Section 17 of the Act

A number of District Valuers have in such cases written to the effect that a letter is held from the local planning authority stating that if an application is made to them under s. 17 of the Act they will hold that the caretaker's quarters are ancillary to the office use of the building, that to change the use to offices would not be a material change in the use of the building as a whole, and would not be development.

Fundamentally this is the same as the original suggestion as to the application of para. 7 of Sched. III, the occupation of the offices and the quarters being lumped together as a single occupation. It is, however, worth while to look further into it both from the point of view of " ancillary use " and " use of the building as a whole."

Official views of multi-use of buildings

The official view of this matter is perhaps shown in the following notes and cases:—

Circular 67 (*February* 15, 1949). In the case of a change of use of *part* of a building *which would nevertheless continue to be used as a whole*, the Minister takes the view that the materiality of the change of use should be decided in relation to the whole premises, *i.e.*, by whether the character of the whole existing use will be substantially affected by the change which is proposed in part. Examples: use of one or two rooms professionally by a doctor, not development; but use of a room as a shop, development.

Journal of Planning Law, 1951, *p.* 175. One room in an eight-roomed dwelling was used as a bank. It was proposed to use one additional room for bank purposes. The Minister held the house was used for two substantially different purposes, and that the use of the room by the bank would constitute a material change of use *in the part* of the house used for residential purposes.

Estates Gazette, *August* 20, 1949, *p.* 143*a*. Room in bungalow used by secretary of estate agent on five days per week. Business card attached to gate. Minister apparently decided this was not development.

The following note on a C.L.B. claim for development charge is interesting:—Parts of an aerodrome were let to three or four tenants for businesses not connected with the aerodrome. A building used as a squash court by the R.A.F. when in occupation had not been used since derequisitioning. This room was taken over by one of the tenants. There was no change in the use of the aerodrome as a whole, but there was a material change of use in the room as separately occupied, and development charge was payable.

Bulletin of Selected Appeal Decisions, *Case* X/18. (See *post*, "Conclusions.")

It would seem to emerge from these cases that the official view is that the whole accommodation *as in the hands of an occupier* is to be looked at, and that the uses of parts of that accommodation may be varied without involving development so long as the character of the whole is not materially changed; but where a part passes into separate occupation its use must be judged as against the former character of the use of the whole.

Conversely, in the case of a caretaker's flat in an office building, the use is regarded officially as being absorbed into the general use, but it will no doubt be conceded that where the building is let out in a variety of uses it would be necessary

to look at the caretaker's use separately. That is because it is in fact a separate use of distinguishable premises and the position does not change according to whether in the course of letting from time to time the use of the building assumes substantially one character or divides into many characters.

An even further broadening of the basis of consideration is found in some local planning authority decisions. For example, in one area a change of use in separately occupied basement premises from storage to offices was held not to be development as it did not affect the character of the building as a whole. On the other hand, it seems to be thought in another area that to change the use of a let dwelling in an office building to offices would be a material change of use (although its effect on the character of the building as a whole would scarcely be noticed) but that the change of use of the caretaker's quarters to offices would not be material.

Analysis of s. 12 (2)

By s. 12 (2) of the Town and Country Planning Act, 1947, development means " . . . the making of any material change in the use of any buildings or other land."

The use of the word " buildings " in the plural may be noted. In proviso (*a*) to s. 12 (2) the reference is to the alteration of " any building " and in s. 12 (3) (*a*) to the use of " any building "; but in proviso (*d*) to s. 12 (2) it is to the use of " any buildings." Section 78 (1) refers to " a building," and s. 80 (1) to " buildings." Section 14 (2) (*b*) and s. 79 (1) refer to " any buildings or works " which is a composite expression especially defined in s. 119 and not comparable. The use of the word " buildings " instead of " building " (which is the word defined in s. 119) nowhere appears to have any particular drafting significance. It does not imply that the provisions noted will have effect only where more than one building is involved, and although a large block (such as a block of shops and offices) is sometimes referred to as " buildings " (possibly because comprising more than one unit of accommodation or to emphasise the extent) the provisions are probably not intended to be limited to such buildings. The word " buildings " will also sometimes be found in the plural in the same way as " works " is found in the plural for an embankment or other single piece of construction.

The expression " other land " in s. 12 (2) is, however, significant. " Land " includes a " building " (s. 119 (1));

but if s. 12 (2) referred simply to the use of land, then, in the case of land with a building applied to different uses on different floors, the use of the land would be a composite use. Presumably the division of land into " buildings " and " other land " is intended to control individually each of the uses in a building in more than one use (coupled with the definition of " building " as including part of a building: s. 119). If the word " buildings " has any particular significance it could be that it was employed in s. 12 (2) to ensure that the various parts of the building should be considered as separate buildings and not as a single building.

Probably, therefore, development by means of a material change of use can arise in any building, or any part of a building. The matter to be considered is the use; if any premises (building, part of a building, or " other land ") are applied for the purposes of a particular use and that is discontinued, and the premises are then applied for the purposes of a different use, one must look at the two uses and consider whether they are materially different.

It is to be observed that there is no suggestion here that it is the character of the use of a building as a whole which has to be considered, nor is there any reference to the occupier or occupiers. Indeed, as noted above, the division of " land " into " buildings " and " other land " seems to be purposely designed to avoid that result. What has to be looked at is a use and the premises applied to that use. The point to be considered is, has that use of the premises been changed?

Incidental and ancillary Uses

Again, there is no reference anywhere in the Act to ancillary uses. By ancillary is meant a subordinate or less important use and not an incidental use, which, more than being ancillary, is one constituting an incident of another use, *i.e.*, not existent as a use in itself. For example, a workroom used for making minor repairs and adjustments to articles being sold in a retail shop is an incident of the retail shop use; but if goods are received for adjustment and repair from other sources the use is no longer an ancillary use incidental to the retail business but an ancillary use the growth of which might make it become the primary use. If a person occupies distinguishable parts of a building for separate uses, it may be immaterial that they are not equal uses but that one use is ancillary to the other. Para. 7 of Sched. III can hardly have been intended to apply only to the

rare cases in which one person occupies premises for two or more distinct, equal and independent uses.

Premises used indistinguishably for two or more uses

Of course, if on the appointed day premises were being used indiscriminately *as a whole* and not as separate parts for two purposes by one person, one use being a main use and the other ancillary, no doubt, there is no alternative but to look at the composite use and an alteration in the balance of the uses may constitute a material change of use. Thus, if the ancillary use were to become a more important part of the composite use a stage might be reached at which there was a material change of use although the whole premises continue to be applied in common to both uses (see, for example, *Bulletin of Selected Appeal Decisions*, X/21).

Derating cases

Nevertheless, it may be that certain derating cases (*e.g.*, the " shop cases " in which it was held that the business of a shop is indivisible, so that a pasteurisation factory was part of a milk shop and other similar results) give some support to the view that the use as a whole of premises in one occupation should be looked at even when the floor space devoted to the uses is distinguishable. On the other hand, the Derating Acts are not concerned with the effects of change of use and under the Planning Act the considerations are different. There is no reference in the Planning Act to " primary use " as in s. 3 of the Rating and Valuation (Apportionment) Act, 1928, and consideration of the primary use of premises should, therefore, only arise where there are two or more uses of the *same* area or cubic space. This difference no doubt accounts for para. 7 of Sched. III and art. 3 (1) and (3) of the Use Classes Orders, the first two appearing to apply to equal or ancillary uses of distinguishable premises and the latter to an incidental use in distinguishable or indistinguishable premises.

Conclusions

Some results of this reasoning follow. If it is sound, it is clear that it is immaterial whether the use of caretaker's residential quarters which are distinguishable premises in a building let out in offices constitutes a use ancillary to the use of the offices (or if there is more than one use of the let parts, *e.g.*, office and light industrial uses, ancillary to either

or both such uses). Even if the quarters could be regarded as ancillary to the office use, the residential use could not be changed to office, light industrial, or other use carried on in the building, since distinguishable premises are involved. The quarters and the offices are distinguishable by not being in one occupation. The quarters are usually separately assessed for rating and are assessed as a dwelling. They must comply with by-laws for a dwelling. The use must be looked at as a use; it is residential and a change to office use would be a material change of use. If the office part and the caretaker's quarters were wholly in one occupation then a change of use of the residential portion would be *free of development charge* within the limits of para. 7 of Sched. III. The direct implication of that is that the change is development so that planning permission is not dispensed with.

In any event the use of the quarters is ancillary to the *general occupation*, not *use*, of the building. It is no more ancillary to any particular use or uses of other parts of the building than would be a letting office in the building or the staircase which gives access to the upper floors whatever their use may be. The use is in a sense a business use, a special type of residential use, and it may be that planning permission would be necessary to let the quarters to a tenant for an ordinary residential use, but so far as Part VI is concerned, that merely limits the restricted value.

It would also follow from this reasoning that the decision in Case X/18 of the *Bulletin of Selected Appeal Decisions* is questionable. There, different buildings in a curtilage were applied to different uses and the Minister held that the use had to be looked at as a whole: that there was a primary use and ancillary uses, and that on reletting in parts the future use of any part would have to be compared with the former primary use of the whole and not the former ancillary use of the part.

Broader issues

The problem is important beyond the relationship of caretaker's quarters in an office building, and these issues must be weighed in formulating a decision. Probably many a possible claimant has taken the view, and many a claimant agreed a determination of development value on the view that premises used by an occupier as to part as, say, workshops, and as to another part as offices, could be relet in parts for the former uses of the respective parts. If the Minister is right, then one must consider which of the uses was the primary use of

the premises looked at as a whole, for a letting of part for the ancillary use to be continued as a primary use would be a material change of use.

On the basis of decision X/18 a shop and ancillary dwelling occupied as a whole could be used as a whole as a shop (*cf.* para. 7 of Sched. III); but if the dwelling were let off as a separate dwelling that would be a material change of use. A shop with a resident manager might be in a different position from a shop with the shopkeeper in residence or with the residence separately let. If so, the distinction should be clearly made known.

It is understood that one substantial firm has read decision X/18 as saying that the ordinary shop and dwelling occupied as a whole can be used wholly as a shop, and they make no application for planning permission or determination of development charge in such circumstances.

The official view requires careful consideration and if the Ministry is satisfied it is a reasonable and sensible view it will probably require legislation to make it a lawful view.

A Point from The Fitzwilliam Case

By J. F. Garner, ll.m.,
Town Clerk of Andover

A learned correspondent to this Journal has pointed out an interesting point in the judgments of the Law Lords in *Earl Fitzwilliam's Wentworth Estates Co.* v. *Minister of Housing and Local Government and Another.*[1] The most important passage, in the present context, is that from the judgment of Lord Porter, at p. 293: "It [the claim for compensation from the global sum] is in fact transmissible in all cases except as part of the consideration given to the purchaser of the land in exchange for an undertaking to pay the development charge," and Lord Goddard observes (at p. 294): "The only thing he [a landowner] cannot do is to assign the right to a purchaser as part of the consideration of the purchase, but for all other purposes his right to assign [under s. 64 (2)] remains, and, after all, this is a mere temporary provision as the compensation money is to be paid in 1953 after which there will be nothing to assign." Our correspondent refers to the very general practice whereby land is sold with the benefit of an assignment of the Part VI claim, and very rightly points out that in such cases it is most unusual for the land to change hands at the existing use value; moreover, the vendor is not normally concerned to take any undertaking as to payment of the development charge, as it is obvious that the purchaser will be liable to pay a development charge if, and when, he develops. What effect, then, do these statements, which can certainly not be regarded as *obiter*, have on this very normal practice?

In making the observations cited, the learned Lords were considering the reaction on one another, with reference to the powers of compulsory acquisition of the Central Land Board, of s. 43 (1) and s. 64 (2) of the Act of 1947. It had been suggested on behalf of the landowners that the powers of the Board under s. 43 were purely financial, and to hold that this

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[1] 2 P. & C. R. 386; noted *ante*, p. 229.

was not so and that the Board were empowered to acquire land compulsorily in order to enable a would-be developer to acquire it at existing use value, would in effect act as a fetter on the unrestricted right to assign a Part VI claim given by s. 64 (2). Their Lordships, it is submitted, were not impressed by this argument, and agreed that a vendor could not assign his right to a Part VI claim in circumstances where the result would be that the property would change hands at a figure in excess of the existing use value, without running the risk of the Board compulsorily acquiring the land. The Act itself, as our correspondent rightly points out, does not in as many words provide that the right to assign may not be exercised in such circumstances, nor should the observations of their Lordships be read, it is submitted, as suggesting that the title of an assignee of a Part VI claim would be in any way impaired in such circumstances. Such an assignee should merely accept their Lordships' remarks as a salutary warning to purchase with discretion.

With respect to our correspondent, we do not feel that the comments referred to are likely to influence greatly the existing practice; after all, as Lord Oaksey says (at p. 396), "there is nothing in the Act to which your Lordships' attention was drawn to show that land cannot be sold at prices higher than its existing use value," and it is submitted that while the present land shortage continues, land will continue to change hands at prices in excess of the existing use value, either by reason of the assignment of the Part VI claim, or by a straightforward cash payment. It would, in our view, require a very much more liberal exercise of the powers of the Central Land Board which were acknowledged to exist by the *Fitzwilliam Case* than has been used hitherto.

The Nature of an Advertisement

By Ronald P. Crompton, m.a. (Oxon), l.a.m.t.p.i.
Deputy Town Clerk of the Borough of Middleton

Some difficulty has been occasioned by the definition of advertisement under s. 119 of the Town and Country Planning Act, 1947, and under the Town and Country Planning (Control of Advertisements) Regulations, 1948. The Regulations define an advertisement as " any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, in the nature of and employed wholly or in part for the purposes of advertisement, announcement or direction (excluding any such thing employed wholly as a memorial or as a railway signal), and without prejudice to the foregoing provision includes any hoarding or similar structure used or adapted for use for the display of advertisements, and references to the display of advertisements shall be construed accordingly." A similar definition in the Act excludes only the part contained within the brackets.

There may be divergent opinions on the meaning of the words " employed wholly or in part for the purposes of advertisement." The question arises as to whether the definition is wide enough to include dilapidated advertisements which are no longer required for advertising purposes or which are so badly disfigured or torn as to be ineffective for such purposes. In certain cases advertisements are painted on brick walls and, owing to the firms having ceased to exist, are not only injurious to the amenities but also useless. In short, there are two types of advertisement—the defaced and the obsolete—which may be said not to be " employed . . . for the purposes of advertisement." It may be argued that a defaced advertisement which no longer in fact conveys to the public the subject-matter intended to be advertised is not " employed." An example of this is where an advertisement was painted on a wall and part of the wall has been demolished and rebuilt without the advertisement being repainted. The obsolete advertisement which is perhaps concerned with a concert or election which is past may not appear to have any surviving connection with the " purposes " of advertisement.

Perhaps the definition should not receive too narrow an interpretation. If advertisements were once advertisements within the section there is a rebuttable presumption that they continue to be so, which is not destroyed by mere disrepair. In the eyes of a passer-by they would still be advertisements, and the fact that the advertiser had ceased to exist would not alter their nature. It may not be permissible to introduce into planning law the man in the street or in more accepted legal phraseology "the man on the Clapham omnibus," but the point is clearly whether members of the public would view an advertisement which has seen better days as anything but an advertisement.

The fact that there can be a difference of opinion on the interpretation of the section would make it appear important that a clearer definition be given which would unmistakably relate the terms "employed," "used" and "adapted" to the past as well as the present, and make it clear that "advertisement" means the whole of any word, letter, model or sign. It is, of course, the unsightly advertisements that local planning authorities more especially wish to control.

Development in Barsetshire

Variation of Development Charge

The following conversation may be assumed to have taken place between S., a surveyor, and D.V., the district valuer, during an informal discussion on development charge:—

S. You may remember that a year or two ago you assessed a development charge of £175 on an extension to a factory at Hogglestock belonging to a client of mine.

D.V. It was further back than that, I believe. (Looking up his records.) Yes, I see it was in July, 1949 ([1949] J.P.L. 403). Well, I think we've both learned a lot more about development charge since then.

S. I've learned some more facts about this case and would like to re-open it.

D.V. I hardly think you can do that. The development charge has been assessed, paid, and the buildings completed and in use for some time. In effect your client was buying the development rights conferred by the planning permission, and if your client made a bad bargain I can't help it now, nor should I expect you to agree to re-open it after this lapse of time if I had let you off too lightly. In any case I see the development charge was only £175, so there cannot be very much in it.

S. It's just a question of principle, really. As there is a statutory basis for the assessment of development charge, and as I have now discovered further facts which affect that basis I think the case ought to be re-opened. I gain some support from para. 127 of the Practice Notes. Let me read them to you:—

Practice Notes, 1st Series ([1949] J.P.L. 252 *ff.*): "The Board have power (s. 73 (1)) to vary, on applications made to them, a determination of development charge having regard to any change of circumstances since the determination was made, including cases where land is affected by the development of neighbouring land in a manner inconsistent with the development plan. The Board do not propose to exercise this discretionary power merely because a developer has made an unwise bargain.

The example given in the section itself of a change of planning permission on adjacent land is typical of the type of "change of circumstances" which might influence the Board. In cases within the section they are authorised to amend, discharge or release any covenants or charges given to them on the original determination, and in some cases they may repay a charge already received."

D.V. You should have gone to the Central Land Board in the first instance, and not come direct to me, as officially I can do nothing until the file is returned to me. However, it will save time later if you give me the additional facts which you think may justify a variation of the development charge.

S. I have now discovered that certain buildings, having an aggregate of 16,000 feet cube were destroyed by fire during the war and never rebuilt. As you know, in arriving at the development charge of £175 we took as the tolerance 10 per cent. of the existing buildings which had a cube of 70,000 feet, giving 7,000 feet cube. The extension was 20,000 feet cube, so 13,000 feet cube, as we then thought, ranked for development charge.

D.V. So you now say the calculation ought to be:—

Existing buildings	70,000 feet cube
1/10th tolerance ..	7,000 feet cube
Destroyed buildings ..	16,000 feet cube
with a right to rebuild.	
Total tolerance under Sched. III ..	23,000 feet cube
New extension	20,000 feet cube, within the tolerance, so development charge "nil."

S. Yes, and we have 3,000 feet cube left towards a further extension, plus, I think, 10 per cent. on the 16,000 feet cube of destroyed buildings which you have omitted.

D.V. Have you definite evidence of this fire?

S. Here is a letter from the Secretary of the Hogglestock Volunteer Fire Brigade certifying it.

D.V. Well, if you will take the matter up with the Central Land Board through the official channels I will report a "nil" when the file comes to me, and in due course your client will no doubt get a refund of the £175 he has already paid.

S. Thanks very much!

The Rating of Site Values

A majority report presented to the Minister of Housing and Local Government and the Secretary of State for Scotland by the Interdepartmental Committee on the Rating of Site Values is against the adoption by the Government of any scheme of site value rating. This report [1] is signed by the chairman (Erskine Simes, Esq., Q.C.) and five members (Sir William Darling, Mr. J. D. Trustram Eve, Lord Greenhill of Townhead, Mrs. Ursula K. Hicks and Mr. James McBoyle). The three other members of the Committee (Lord Douglas of Barloch, Mr. C. H. Walker and Alderman Thomas Waterhouse) have presented a dissenting minority report.

The Committee [2] was appointed in November, 1947, "to consider and report on the practicability and desirability of meeting part of local expenditure by an additional rate on site values, having regard to the provisions of the Town and Country Planning Acts and other factors."

In all, 42 meetings were held and the Committee received evidence from the professional bodies concerned, from associations representing interests in land and industry and from other public bodies. They circulated a questionnaire to governments, local authorities and experts in countries overseas in which the rating of site values is in operation, and a summary of the information received from this source is given as an appendix to the report.

The report includes an historical sketch of the previous inquiries into site value rating in Great Britain.

Majority Report

The majority of the Committee considered that neither past evidence nor the evidence from overseas was relevant to the conditions in Great Britain today, as the provisions of the Town and Country Planning Acts, 1947, had fundamentally altered the position by removing from the owner of land its development value—the difference between the restricted and unrestricted value. In their view it would consequently be

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1 "The Rating of Site Values," H.M.S.O., 5s. (5s. 3½d. post free).

2 Other former members of the Committee were Mr. C. H. Lockhart (to February, 1949), Mr. T. A. O'Hare (to February, 1948), and the Rt. Hon. R. R. Stokes, M.P. (to March, 1950).

inequitable to rate an owner of land on the unrestricted value, though the advocates of site value rating have always argued in favour of this, and unrestricted value is used as the basis where site value rating is in force abroad. After examining various possible bases of assessment, they decided that in the present circumstances of this country a site value rate should be levied only on the existing use value of the land.

The effect of this, however, would be to deprive a site value rate of some of the characteristics to which its advocates have usually attached most importance, especially the possibility of acting as a stimulus to development. In the opinion of the majority of the Committee the only appreciable effect of such a rate would be to redistribute the rating burden, tending to relieve residential property and suburban areas at the expense of commercial property and the centres of towns; they had no evidence that this would be a desirable result.

The advocates of site value rating have generally maintained that the rate should be paid by owners, whereas at present in England and Wales rates are, generally speaking, the liability of occupiers. The majority of the Committee held that it would in the long run make little or no difference whether the rate were levied on the owner or occupier—unless there were legislative interference with the sanctity of existing contracts, which they were unwilling to countenance.

The majority were also concerned at the very grave technical difficulties of valuing land separately from the buildings standing upon it in a country such as Great Britain, and felt that any attempt to do so would lead to artificial assessments which the ordinary ratepayer would not understand. Their conclusion, accordingly, was that they did not deny the possibility of rating site values, but were impressed with the " administrative difficulties, the prospect of litigation which would inevitably arise, the undesirability of diverting much-needed manpower for the purpose and the relatively small revenue likely to be obtained."

To the introduction of site value rating in Scotland, the Committee saw additional objections in the existence of owners' rates and the extreme difficulty of reconciling site value rating with the feudal system of land tenure. They took the view that in Scotland, through the existence of owners' rates, owners are at present in varying degrees rated for their interests in sites. The adaptation of site value rating to the feudal system of land tenure could not be arranged in such a way as to be fair to owners and superiors alike. " If

the taxation of the superior's interest as well as vassal's interest were contemplated, then only by examination of the circumstances at the time of making of each feu contract could fair distribution of a site value rate among interests in land be achieved." A further objection was that if site value rate payments were made deductible from ground burdens, confidence in feu duties and ground annuals as forms of investment would be destroyed. Feu duties and ground annuals had come to be accepted as secure forms of investment which were much sought after by trusts, charities, insurance companies and other bodies.

On these grounds the majority reported that both in England and Wales and in Scotland the meeting of any part of local expenditure by an additional rate on site values, having regard to the Town and Country Planning Acts and other relevant factors, would be neither practicable nor desirable.

Minority Report

The minority of the Committee considered that the rating of site values was both practicable and desirable, and that the arguments in favour of it stood unimpaired. They considered that the provisions of the Town and Country Planning Acts, 1947, involved some changes in the method of application of site value rating but did not affect the principle. Where the restricted value was less than the unrestricted value they considered that the Crown should bear the rate on the difference between these two values. They considered that the rating of site values should apply to agricultural land and other derated hereditaments.

The minority recommended that site value rating should be introduced in Scotland. They disputed the majority's assertion that owners in Scotland are at present, to any great extent, rated for their interests in sites, and said that site value rates should be paid by owners and deducted from feu duty or ground annual payments to feudal superiors.

Progress of Development Plans

(*Continued from p. 277, ante*)

Plans submitted to the Minister

The following is a continuation of the list of plans submitted to date (May 21, 1952). Any objections should be sent to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before the closing date indicated.

87. Wolverhampton County Borough Council.
Submitted to Minister: April 16, 1952.
(*London Gazette*, April 18, 1952.)
Closing date for objections: June 21, 1952.

88. Norfolk County Council.
Submitted to Minister: April 29, 1952.
(*London Gazette*, May 2, 1952.)
Closing date for objections: June 14, 1952.

89. Southport County Borough Council.
Submitted to Minister, April 29, 1952.
(*London Gazette*, May 6, 1952.)
Closing date for objections: June 21, 1952.

90. Leicester County Borough Council.
Submitted to Minister: May 13, 1952.
Closing date for objections: July 12, 1952.

Plans approved by the Minister

The development plans of the following local authorities have now been approved by the Minister and have become operative as from the dates indicated. Any application to the High Court to question the validity of a plan or any provision therein must be made within six weeks from the date when notice of approval of the plan was first published.

7. Westmorland County Council (excluding Joint Board area).
Approved: March 28, 1952.
Operative: April 15, 1952.
(*London Gazette*, April 22, 1952.)

21. Carlisle County Borough Council.
Approved: April 7, 1952.
Operative: April 25, 1952.
(*London Gazette, April* 25, 1952.)

22. Gateshead County Borough Council.
Approved: April 30, 1952.

Dates of local inquiries

49. Northampton County Council.
Local inquiry: Changed to May 27, 1952.

50. Buckinghamshire County Council.
Local inquiry: June 16, 1952.

54. Salford County Borough Council.
Local inquiry: July 16, 1952.

56. Walsall County Borough Council.
Local inquiry: July 1, 1952.

59. London County Council.
At the meeting of the London County Council in May, 1952, the chairman of the Town Planning Committee stated, in reply to a question by Mr. Patrick Stirling, that about 5,550 objections had so far been lodged in respect of the development plan for the county of London. The local inquiry is not likely to take place before the early autumn.

64. Great Yarmouth County Borough Council.
Local inquiry: July 9, 1952.

68. Manchester County Borough Council.
Local inquiry : October 10, 1952.

69. Middlesbrough County Borough Council.
Local inquiry : July 1, 1952.

70. Bury County Borough Council.
Local inquiry : June 25, 1952.

Parliamentary Intelligence

New Towns Bill

The New Towns Bill, under which the aggregate amount of advances which may be made to the New Towns development corporations will be increased from £50 million to £100 million, passed the Second Reading stage in the House of Commons on March 31, 1952, after a debate in which the Bill was supported by both Government and Opposition speakers. (March 31, 1952, H.C. Debates, Vol. 498, cols. 1268–1313.)

Replies to Questions in the House of Commons

County Planning Committees

In a written answer to Mr. J. Morrison, who suggested there should be distinctive agricultural representation on county planning committees, the Minister of Housing and Local Government, Mr. Macmillan, said that the composition of the committees was a matter for the local planning authorities. County councils invariably consulted the Ministry of Agriculture in relation to development plans and the control of development. (March 28, 1952. H.C. Debates, Vol. 498, col. 87.)

Development Charges

In reply to Mr. Arbuthnot the Parliamentary Secretary to the Ministry of Housing and Local Government, Mr. Marples, said that the Minister was not yet in a position to make a statement about amendment of the provisions of the Act relating to development charge, but the matter was being very carefully considered. (April 1, 1952. H.C. Debates, Vol. 498, col. 1408.)

Enforcement notices—Burgess v. *Jarvis*

In a written answer to Mr. Turner-Samuels, who asked whether amending legislation would be introduced to alter the position shown by the Court of Appeal's decision in *Burgess* v. *Jarvis* (noted *ante*, p. 230) whereby no fresh enforcement notice may be served where a s. 75 enforcement notice is invalid, the Minister of Housing and Local Government, Mr. Macmillan, said he was studying the effects of this decision.

(April 1, 1952. H.C. Debates, Vol. 498, col. *104*.) The following is an extract from a letter subsequently sent by the Minister to Mr. Turner-Samuels as a result of the question:—

"I see that leave to appeal to the House of Lords was granted to Sevenoaks Rural District Council, so that until it is known whether they propose to take advantage of it, the matter cannot be regarded as finally closed. Local authorities who have sought the department's advice on the subject during the past few years have, however, been told that enforcement notices should specify a period at the end of which they would take effect so as to comply with subs. (3) of s. 23 of the Town and Country Planning Act, 1947, and another period within which steps should be taken for complying with the notice so as to satisfy s. 23 (2).

"I cannot believe that many authorities will have construed the section, as did Sevenoaks Rural District Council, so as to require the steps specified in the enforcement notice to be taken within a period which is the same as the period for appealing against the notice. Moreover, the fact that the three-year period of limitation allowed by s. 75 had elapsed before the error in drafting an enforcement notice in this way has been shown to be a fatal one, does not seem to be any justification for extending the period of limitation. On the contrary, it rather suggests that not many authorities can have been in doubt about the proper construction of the section.

"I should add that the whole object of s. 75 was to provide a fixed period at the close of which development which had not been enforced against should be given a clean sheet. It would be quite against this principle to attempt to re-open the period, and I certainly think it would be wrong for me to consider doing so simply on the strength of one council's experience."

The following is an extract from the reply by Mr. Turner-Samuels:—

"On the assumption that the case goes no higher I think you may want to reconsider its present effect when you ascertain how many councils are affected by it.

"This is not a case where the period of limitation has been allowed to lapse. It is rather a case where it was sought to take action during the period of limitation but by an oversight or slip this has been defeated. I do not quite see how the present position can be sustained if the public interest originally required the powers conferred by the legislation in

question, where these powers have in fact been used but frustrated by a purely technical omission or formal error.

"These considerations do, I think, cancel the view expressed in the final paragraph of your letter to me.

"Moreover that paragraph manifests a misconception. *It is not* the case of 'one council's experience.' I am reliably informed that the L.C.C., Middlesex C.C., and many other local authorities are affected."

Near Ripe Claims

In a written answer to Sir H. Roper, who asked whether owners of land purchased by a local authority for housing where development charge has been paid within 12 months of the purchase could not be included in the classes of Part VI claimants to be given preferential treatment, the Chancellor of the Exchequer, Mr. Butler, said that the position of all owners of land compulsorily acquired is being borne in mind, but he could not consider giving special treatment to further classes of Part VI claimants. (April 8, 1952. H.C. Debates, Vol. 498, col. *203*.)

Amendment of Act of 1947

In a written answer to Sir I. Fraser Mr. Macmillan stated that it would not be possible to introduce legislation to amend the Town and Country Planning Act, 1947, during the present session of Parliament. (April 22, 1952. H.C. Debates, Vol. 499, col. *5*.)

Central Land Board Practice

Builders' near ripe land—Effect on Part VI claim of sale of land or assignment of claim

The following is a letter dated April 25, 1952, from Messrs. Spencer, Gibson & Son, Solicitors, of Sutton, Surrey, to the Regional Manager, Central Land Board, Kingston-on-Thames, and the reply of the Regional Manager dated April 30, 1952:

"A client of ours, a builder, having a priority claim under Part VI of the Town and Country Planning Act, 1947, for near ripe treatment, is in some financial difficulty in arranging with his creditors. Financial assistance has been arranged for him to satisfy the claims against him and it is desired to secure the persons finding the necessary finance by an assignment of the claim to which he is entitled under the near ripe treatment.

"We are not sure of the position although in the ordinary way he would be entitled to assign his claim or to mortgage it, as it appears to us at the moment it is a matter for the discretion of the Central Land Board and is not covered by Pamphlet S.1 A/NR (Revised).

"Would you be kind enough to let us know whether he may deal with his claim in the manner suggested or whether the matter could be carried out by him executing a power of attorney to some person to receive the claim on his behalf?"

Reply

"The Board have already announced in para. (3) (*a*) of their pamphlet S.1 A/NR, a copy of which is enclosed, dealing with builder's near-ripe land, that any land sold with an assignment of the right to a payment out of the sum of £300m. will be excluded from the near-ripe ration.

"They now wish it to be understood that equally they cannot agree to include in the near-ripe ration any land which has been sold since July 1, 1948 (with or without assignment) except land sold to a public authority at its existing use value or sold in accordance with the Board's pamphlet House 1, a copy of which is enclosed.

"The Board also wish it to be understood that if land

which has already been included in a near-ripe ration agreed with them should be sold after July 1, 1948, *on any other basis*, it will be excluded from the near-ripe ration, and that no other land may be included in its place."

MINISTRY OF HOUSING AND LOCAL GOVERNMENT CIRCULARS

[*Continued from p. 228, ante*]

Circular No. 45/52, dated April 30, 1952. Coal Mining (Subsidence) Act, 1950.

Notes of Cases [1]

High Court—Queen's Bench Division

Compulsory Purchase by Central Land Board

Hanily v. Minister of Local Government and Planning and Central Land Board [2] (April 29, 1952).[3] This was an appeal against a compulsory purchase order made by the Central Land Board and confirmed by the Minister of Local Government and Planning, in respect of .21 acre of land at Sydenham on which there were eight condemned cottages.

In January, 1950, the appellant had wanted to sell the land, and was approached by a firm of sheet metal workers, who without her knowledge had applied for planning permission to use the land for industrial purposes and received such permission in December, 1949. The appellant had said she would not accept less than £2,100, but the firm refused to pay more than the existing use value of the land, about £400 to £450. In April, 1950, the appellant was offered and accepted £1,750 for the land from a builder. The sheet metal firm had meanwhile approached the Central Land Board, and also in April, 1950, the Board made a compulsory purchase order, which was eventually confirmed by an order of the Minister.

The grounds of the appeal were that the orders were made for the purpose of preferring one private developer to another and, alternatively, that there was no planning permission for development of the land; and that they were not within the powers of the Act of 1947.

Parker J. said that there was nothing in the town planning legislation requiring owners of land to be notified that it was to be developed, and the planning permission was perfectly valid. As to the Board preferring one developer to another, if a series of sales in excess of current use value were

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[1] Full reports of these cases will be published in *Planning and Compensation Reports*.

[2] A previous decision in this case, by the Court of Appeal on a procedural matter, is reported at 2 P. & C.R. 161, and noted at [1951] J.P.L. 608.

[3] Counsel: *Sir Arthur Comyns Carr, Q.C.*, and *J. G. Kekwick*, instructed by Stow & Co., for the appellant; *The Attorney-General* (*Sir Lionel Heald, Q.C.*) and *J. P. Ashworth*, instructed by the Treasury Solicitors.

permitted, existing use value would become equivalent to development value, and it was part of the Board's functions to prevent sales at more than existing use value.

Appeal dismissed.

Compulsory Purchase—acquisition in advance of requirements

Palmer v. Minister of Housing and Local Government and Romford Corporation [3a] (March 27, 1952). This was an application for a compulsory purchase order to be quashed.

On June 13, 1951, the Romford Corporation made an order under the Physical Training and Recreation Act, 1937, and the Acquisition of Land (Authorisation Procedure) Act, 1946, for the compulsory purchase of 19 acres of land belonging to the applicants; the order, which was made with the intention of using the land for playing fields, was confirmed by the Minister of Housing and Local Government. Three acres of the land were occupied by caravans and the corporation had expressed their intention to allow the caravans to remain there for 12 months. It was not disputed that there was a great need of playing fields in Romford. The owners of the land applied for the compulsory purchase order to be quashed on the grounds that the corporation's action in allowing the caravans to remain showed that the land was being acquired in advance of requirements and that under the powers invoked in making the order the corporation had no power to acquire land in advance of requirements.

PARKER J. said that in his view it was impossible to say that, because the caravans were being permitted to remain on it for a year, the land was being acquired in advance of requirements.

Application dismissed.

HIGH COURT—CHANCERY DIVISION

Planning Permission Under 1932 Act Agreement

Thackray v. Central Land Board [4] (May 7, 1952). This was a summons brought by the owner of certain land at

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[3a] Counsel: *Harold Williams, Q.C.*, and *W. L. Roots*, instructed by Lees & Co., for the applicants; *J. P. Ashworth*, instructed by the Solicitor, Ministry of Health.

[4] Counsel: *H. Heathcote-Williams, Q.C.*, and *Ronald Bernstein*, instructed by Lamartine, Yates & Lacey, for Francis & Davies, Wembley, for the plaintiff; *Denys Buckley*, instructed by the Treasury Solicitor.

Ealing, Middlesex, to determine whether planning permission for the erection of 14 shops with flats above (which permission had in fact been given under the Act of 1947) was required under the Act and whether development charge was payable.

In July, 1937, the owner had entered into a written agreement with the Ealing Borough Council pursuant to s. 34 of the Act of 1932, under which permission for the erection of the buildings had been granted, subject to certain planning restrictions. It was contended on his behalf that although the Act of 1932 had been repealed, the agreement and the town planning scheme under which it had been made had been preserved under Sched. X to the Act of 1947.

DANCKWERTS J. said that s. 12 (5) of the Act of 1947 provided that in certain cases planning permission "shall not be required" under the Act of 1947, and under ss. 77 and 78 permission "shall be deemed to have been granted" in certain circumstances. This showed how previous permissions had been dealt with under the Act of 1947, but the present case did not fall within any of these provisions.

By virtue of para. 10 of Sched. X to the Act of 1947 any right given by the agreement of July, 1937, was not affected by the repeal of the Act of 1932, but the permission remained only a consent given under the previous legislation and not a permission given under the Act of 1947. Accordingly, planning permission was required under the Act of 1947, and it followed that a development charge was payable.

Summons dismissed, with costs.

Objection to Compulsory Purchase

Uttoxeter U.D.C. v. Clarke [5] (April 29, 1952). In this action the plaintiff council sought an injunction to restrain the defendant (who was a member of the council) from re-entering an estate comprising a house and $7\frac{1}{2}$ acres of land at Uttoxeter, which had been acquired by the council under a compulsory purchase order made in 1947 under the Housing Act, 1936.

The question of compensation for the compulsory purchase had been dealt with by an official arbitrator, but the defendant had refused to give up possession and had been evicted

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[5] Counsel: *W. L. Roots*, instructed by F. S. Hawthorn & Son, Uttoxeter, for the plaintiffs; the defendant in person.

with his family by the sheriff in July, 1950. He had subsequently re-entered the premises but had vacated them in compliance with a court order, pending trial of the present action.

The defendant said that the plaintiffs had no legal title to the estate, and had not put the property to housing purposes, for which it had been acquired. He claimed the protection of, *inter alia*, Magna Carta.

Lloyd-Jacob J. said that there was no obligation under s. 79 of the Housing Act, 1936, as contended by the plaintiff, to convert the building to housing purposes. The defendant had argued that there was an undoubted right for citizens to retain their property except when deprived of it by due process of law. That was correct, but in this case para. 15 in Sched. I to the Acquisition of Land, etc., Act, 1946, provided for an aggrieved person to take steps against the compulsory purchase order within six weeks. That period had long since expired, and under para. 15 the order could not subsequently be questioned in any legal proceedings.

Injunction granted, with costs against the defendant.

Lands Tribunal Decisions[1]

Compensation for Compulsory Purchase

Langport Trust, Ltd. v. Ministry of Supply [2] (Ref. 47–48–49/1951. April 3, 1952). This was a claim for compensation for the compulsory purchase of several parcels of heath land near Ringwood, Hampshire, comprising 81.406 acres and a road 950 yards in length and 36 feet wide.

Evidence for the claimants was that plots of the land had been sold for about £26 per acre before July 1, 1948, and £17 per acre after that date. The District Valuer gave evidence of purchase of several plots for £6 per acre, with some additions for timber, fencing and ploughing.

The Tribunal (CECIL H. BAILEY, ESQ., B.SC., M.I.C.E., F.R.I.C.S.) held that a deduction must be made from the £17 per acre figure as this would have been influenced by the purchasers' hopes that they would be able to obtain permission to build on the land. The value on the assumptions required to be made by the Act of 1947 was determined to be £10 per acre, together with a nominal amount of £1 for the length of road, the total compensation accordingly being £815.

Gibbs v. Dover Corporation [3] (Ref. 40/1951. April 28, 1952). This was a claim for compensation for the compulsory purchase of the freehold interest in premises known as Marine Garage, Dover, comprising a number of one-storey and two-storey buildings in a severely war-damaged state, and in respect of which a value payment had been agreed with the War Damage Commission. The premises had been used as a garage and taxi business and for the sale of petrol, oil and accessories.

Notice to treat was deemed to be served on February 11, 1949.

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[1] Full reports of these cases will be published in *Planning and Compensation Reports*.

[2] Counsel: *A. John Jenkins*, instructed by Turner & Day, Bournemouth, for the claimants; *B. S. Wingate-Saul*, instructed by the Treasury Solicitor.

[3] Counsel: *W. B. Harris*, instructed by Stilwell & Harby, Dover, for the claimant; *Harold I. Willis*, instructed by the Town Clerk, Dover, for the acquiring authority.

The claimant's valuer submitted a valuation of £4,600 (£2,000 plus disturbance, etc., £2,600). The District Valuer valued the premises at £810 (£710 plus disturbance, etc., £100).

The Tribunal (JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.) was satisfied that the claimant had been desirous of retaining the garage and reinstating it for use in her business. He accepted the claimant's valuer's figure of £2,000 and awarded £1,000 for disturbance, the compensation accordingly being £3,000.

Lister and Yarr v. Millom R.D.C. (Ref. 65/1951, April 29, 1952). This was a claim for compensation for the compulsory purchase of the freehold interest in 1.757 acres of pasture land at Millom, Cumberland, required for the building of houses.

Notices to treat were served on April 16, 1948.

The Tribunal (CECIL H. BAILEY, ESQ., B.SC., M.I.C.E., F.R.I.C.S.) rejected the claimants' valuation of the land at £1,700, since this was based on its full building value. The District Valuer's valuation of £200, being £100 in respect of each half share of the claimants, was accepted and the compensation determined accordingly.

Brain v. West Bromwich Corporation (Ref. 6123, May 6, 1952). This was a claim for compensation for the compulsory purchase of the leasehold interest in 27.05 acres of land at West Bromwich, of which the acquiring authority were the owners of the freehold interest.

The lease was for 99 years from October 1, 1937, the lessee covenanting to construct roads and sewers and to erect by September 30, 1943, 324 dwelling-houses, the selling value of each to be not less than £425, and the rent payable under the lease being £2 per house per annum with a minimum of £200 per annum for the first five years. Interim development permission under the Act of 1932 for the proposed lay-out of streets was granted in November, 1938, but no houses had been erected by 1946, when the Council decided to acquire the land compulsorily. The Council were by agreement arrived at in November, 1946, at a meeting of representatives of the parties, allowed to take possession on January 1, 1947. Notice to treat was served on October 25, 1947.

The Tribunal (JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.) was requested by the solicitor appearing for the acquiring authority, to assess the compensation on the 1944 Act basis of

1939 prices for the full building value of the land rather than on the 1947 Act basis of restricted value only, if there were jurisdiction to do so. Expert evidence for the authority valued the road and sewer works carried out by the claimant on the land at £950 at 1939 prices, and was that that figure, say £1,000, represented the value of the leasehold interest at 1939 prices, but that the value would be nil if assessed under s. 55 of the Act of 1947.

The Tribunal held that it had no jurisdiction to ascertain the compensation otherwise than in accordance with the relevant statutory provisions, and that the compensation must be assessed under s. 55 of the Act of 1947. Upon the assumptions required by that section the land had no intrinsic value for any development and the road and sewer works were valueless. But as the land was within the area of the acquiring authority, who owned the freehold, they could be expected to pay a substantial price for the leasehold interest in order to get early possession. The value of this was assessed at £1,000, which was determined to be the compensation payable.

Claims for Loss of Development Value

Bottomley v. Central Land Board (Ref. CLB/419/1951. April 22, 1952). This was an appeal against a determination by the Central Land Board that there was no development value in the freehold interest in a plot of land at Shoreham-by-Sea, Sussex. There had formerly been a bungalow on the land but this had been demolished during the war for defence purposes, the owner being compensated for the loss.

The Tribunal (Cecil H. Bailey, Esq., b.sc., m.i.c.e., f.r.i.c.s.) held that the vacant plot of land with the right to build a house and use it as a boarding-house would on the appointed day have had no higher value than the plot with the right to build a house and use it as a dwelling-house only.

Appeal dismissed, with three guineas costs.

Eyre v. Central Land Board (Ref. CLB/685/1951. April 22, 1952). This was an appeal against a determination by the Central Land Board that there was no development value in the freehold interest in a plot of land at Rottingdean, near Brighton, approximately $1\frac{1}{4}$ acres in area. The land was "back" land behind a developed frontage. The owner lived in a bungalow on the land, and based his claim on the prospect of the land being used for building purposes.

The Tribunal (CECIL H. BAILEY, ESQ., B.SC., M.I.C.E., F.R.I.C.S.) held that the land had no value greater than that for its existing use as gardens for the occupiers of adjoining houses.

Appeal dismissed, with three guineas costs.

Porritt v. Central Land Board (Ref. CLB/743/1951 April 22, 1952). This was an appeal against a determination by the Central Land Board that there was no development value in 40 acres of flat alluvial meadowland adjoining the banks of the River Ouse near Newhaven, Sussex.

The appellant claimed that the land was suitable for a factory, as there was an efficient water supply, means for effluent disposal, a tidal river, and two ponds for effluent treatment. He put the unrestricted value at £8,000 (£200 per acre) and the restricted value at £1,600 (£40 per acre).

The Tribunal (CECIL H. BAILEY, ESQ., B.SC., M.I.C.E., F.R.I.C.S.) considered that prima facie there was some substance in the appellant's suggestions, but he had submitted no evidence in support of his valuation of the unrestricted value, and there was other similar land available near-by. The land would have had a high value as pasture land, and its value for industrial or other purposes would not have been measurably greater.

Appeal dismissed, with three guineas costs.

Arbuthnot v. Central Land Board (Ref. CLB/291/1951. April 24, 1952). This was an appeal against a determination by the Central Land Board that there was no development value in premises at Shrivenham, Wiltshire, which was used as a school for small children. Its use had been restricted to use as a school by a restrictive covenant, and planning permission for extending the building had been refused in October, 1947. In December, 1947, permission was given for one teacher to live on the premises, and subsequently part of the premises was reconstructed as living accommodation with the consent of the person entitled to the benefit of the covenant.

The Tribunal (CECIL H. BAILEY, ESQ., B.SC., M.I.C.E., F.R.I.C.S.) upheld a submission for the respondent authority that there was no case to answer, as the Act of 1947 had imposed no new restriction on the use of the property.

Appeal dismissed, with three guineas costs.

British Transport Commission v. Central Land Board [4] (Ref. CLB/225/1951. April 28, 1952). This was an appeal against a determination by the Central Land Board that there was no development value in the freehold interest in the British Transport Commission's sports ground at Northolt, Middlesex, comprising about 31 acres of land laid out as tennis courts, football and cricket pitches, and a car park, with a pavilion and changing-rooms of net floor space 4,200 sq. ft., and implement sheds of cube of 4,320 cu. ft.

The Commission claimed that the unrestricted value was £42,000, which was agreed between the parties at the hearing, and that the restricted value was £27,000, calculated on a basic figure of £800 per acre. The District Valuer for Ealing calculated the restricted value of the property at £42,000, based on an over-all figure of £1,370 per acre.

The Tribunal (ERSKINE SIMES, ESQ., Q.C., and JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.) rejected the over-all method of the District Valuer and indicated that a valuation should be built up from a detailed consideration of the elements of value.

The District Valuer's figures for the elements of the appellants' valuation had not previously been supplied to the appellant or put to his valuer in cross-examination, and this applied also to the detailed figures of certain valuations of other properties given in evidence for the Central Land Board. The Tribunal accordingly emphasised the importance of strict compliance with rule 31 (4) of the Lands Tribunal Rules, 1949,[5] designed to give parties a full opportunity of prior consideration of *all* valuations to be given in evidence.

The Tribunal considered the figures in the valuation of the appellants' valuer in the light of the prices paid for various other sports grounds, and concluded that in the main they afforded reliable guidance. With certain adjustments to these figures, the Tribunal arrived at a restricted value of £30,000, and, accordingly, directed that the development value should be determined at £12,000.

Appeal allowed, with costs at an amount to be agreed or failing agreement to be taxed on the High Court scale.

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[4] Counsel: *G. D. Squibb*, instructed by the Chief Solicitor, British Transport Commission, for the claimants; *C. J. Highton*, instructed by the Treasury Solicitor.

[5] S.I. 1949, No. 2263.

*Notes of Planning Decisions**

Erection of Pre-fab Bungalow between Permanent Bungalows

The following is an extract from the letter of the Minister of Housing and Local Government, dated April 19, 1952, dismissing an appeal against the refusal of Hampshire County Council to grant planning permission for the erection of a pre-fab bungalow on land at Havant Road, Hayling Island.

"There is a considerable amount of residential development along this road and in side roads branching from it, more particularly on the east side. The houses are mostly of permanent character with well kept gardens and sufficient trees to create an attractive village atmosphere.

"The Minister has considered the facts of the case and the representations submitted. He is satisfied that a temporary uniseco bungalow would be inappropriate between pleasant permanent bungalows on the frontage of the main approach road into the Island. While this particular objection could be to some extent met by putting the bungalow at the back of the site, it is most undesirable to place houses so far behind the general line of frontage development that they lie between the gardens of adjoining houses. In these circumstances he has decided to dismiss the appeal."

[By courtesy of the Clerk of the Havant and Waterloo Area Development Sub-committee.]

Use of Private House as Residential Hotel

The following is an extract from the letter of the Minister of Housing and Local Government, dated March 13, 1952, dismissing an appeal against the refusal of the Coventry Borough Council to permit the use of a house at Holyhead Road, Coventry, as a private residential hotel.

"For the appellants it was stated that the proposal to use the premises as a private residential hotel fulfilled an extremely pressing need in Coventry, that the original residential character of the locality had been changed by the intrusion

* The Managing Editor desires to express his thanks to those who have been kind enough to send to this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

of business and industrial users, that there was no evidence to show that congestion of traffic had been caused by vehicles parking outside the appeal premises or that parking did in fact take place, that there were other and larger advertisement boards in the area, and that neither the board nor the use of the premises detracted from the amenity of the immediate neighbourhood.

"On behalf of the council it was stated that the area in which the appeal site was situated was being zoned as residential in the development plan, that the development within the immediate vicinity, the upper part of Holyhead Road, was almost entirely of a good residential character and that the council was anxious to prevent the intrusion of any further business users, to that end. A survey to decide which of the existing advertisements should be challenged was being carried out. The council considered that the housing needs of Coventry were more pressing than those for hotel accommodation. The appeal premises were not suitable or large enough for use as a residential hotel and the intrusion of that use would be a source of injury to the amenities of the locality, but there was no objection to one or two paying guests being taken in, providing the major portion of the house was occupied as a family dwelling. It was also stated as the council's opinion that in view of the large volume of traffic along Holyhead Road and the fact that the carriageway opposite the appeal premises was only 24 feet wide any parking of vehicles outside the premises would lead to serious obstruction and an increase in the danger to road users, and would also lead to annoyance to other occupiers.

"The Minister can see no reason to question the council's planning proposals for the area of which the site under appeal forms part. The house is of a type that is in great demand as a single family dwelling and is quite unsuitable for use as a residential hotel. While the Minister appreciates that some hardship may be involved, he considers that he would not be justified in reversing the council's decision in this case."

[By courtesy of the Town Clerk, Coventry.]

Erection of House for Smallholding

The Minister of Housing and Local Government has dismissed an appeal against the refusal of Hollingbourn Rural District Council to permit the erection of a dwelling for a

proposed smallholding on land adjoining Pack Farm, Runstead Lane, Stockbury.

Permission was refused because it was intended to limit development in this area, which was of great landscape value and ill-provided with services. At a local inquiry held into the appeal it was stated that the nearest water main was about one mile away.

Although generally in favour of giving scope for whole-time smallholdings with a house attached, the Minister considers he would be wrong to give permission in this case. As there is no adequate water supply he thinks the building of a house there would lead to a demand for a piped water supply which could not be economically provided in an isolated area of limited development. He considers he would only be justified in granting permission if there were an overwhelming need, and he is not satisfied that such a need has been shown to exist in this case.

[By courtesy of the Public Relations Officer, Kent County Council.]

Erection of House on Outskirts of Village

The Minister of Housing and Local Government has allowed an appeal against the refusal of Kent County Council to permit the erection of a detached house on land at Taylor's Lane, Trottiscliffe.

Permission was refused on the grounds that the site was outside the natural area of expansion for the village and that the building, if permitted, would constitute an addition to the undesirable sporadic development which has already taken place in Taylor's Lane.

While appreciating the council's wish to prevent further sporadic development around Trottiscliffe, thereby preserving the beauty of the surrounding countryside, the Minister considers there is already sufficient development on the east side of Taylor's Lane to make this additional building unobjectionable, especially if it is well-designed.

[By courtesy of the Public Relations Officer, Kent County Council.]

Replacement of Wooden Dairy Building by Brick and Concrete Building

The Minister of Housing and Local Government has allowed an appeal against the refusal of Gillingham Borough Council

to consent to the rebuilding of an existing dairy at Maidstone Road, Rainham.

The appellant proposed to build a brick and concrete shed in place of the wooden building in which the business has been run since 1922 and which he claims is now too small for convenient and satisfactory working.

Permission was refused on the ground that the proposal was for a considerable extension of buildings for business use in an area which was predominantly residential.

The Minister agrees with the council that the present situation of the dairy is not ideal, but he notes that it has been there for 30 years and there have been no complaints from anybody living in the vicinity. He is not convinced that the proposed new building would afford much scope for expansion of the business, and as he realises that the existing shed is inadequate he considers that he would not be justified in refusing permission for the rebuilding.

[By courtesy of the Public Relations Officer, Kent County Council.]

Twenty-year Time Limit on Erection of Warehouse, etc.

The following is an extract from the letter of the Minister of Housing and Local Government, dated March 6, 1952, allowing an appeal against the refusal of the Buckinghamshire County Council to permit the erection of a warehouse, canteen and office block on land at Station Approach, Linslade.

"The greater part of the eastern frontage to the Station Approach is occupied by the appellants' works for their business of making and repairing sacks for home and export markets.

"The appellants proposed to demolish an open-sided corrugated iron shed, a disused railway coach and a small makeshift wooden hut, and erect buildings on the land which they contended would greatly improve the aspect of the works from the station forecourt, and the warehouse of which would provide proper storage for the sacks at present untidily dumped on the site.

"The council proposed to re-develop the area east of the station, but since this would not take place for some time they were prepared to grant the appellants a 20 years' permission. This offer was refused because it was considered by the appellants to be uneconomical.

"The Minister has carefully considered the facts and the representations made. When the previous appeal regarding

this site was before him, while not dissenting from the council's view that the area should be laid out afresh, he considered that reasonable extension within the site should not be restricted. The Board of Trade have informed him that the appellants' production is important and the new warehouse should enable output to be quickly and substantially increased; the other building is needed to provide proper canteen and welfare accommodation. The Minister considers that these new buildings make fully reasonable, and indeed necessary, provision for the efficient use of the site for its present purpose, and that as there is already permission for the use of the site for industry without limit of time and no early prospect of the council's proposal being carried out, they should not be subject to a limit even of 20 years."

[By courtesy of the Clerk of the Buckinghamshire County Council.]

Condition Excluding Change Within Same Use Class

The following is an extract from the letter of the Minister of Housing and Local Government, dated April 21, 1952, conditionally allowing an appeal against the refusal of the Hastings County Borough Council to grant permission for the continuance of the use of a portion of the basement of the hotel as a hairdresser's shop.

" The case under appeal, however, is not one where it can be seriously contended that temporary use of a portion of the basement as a ladies' hairdressing establishment can be said to affect the character of Wellington Square at the present time, or for some time to come. In fact, the hairdressing establishment as run provides a satisfactory service for its patrons, who come largely from nearby private hotels and guest houses and serves, therefore, a real local need. Furthermore, by reason of its location, the establishment is quite inconspicuous.

" The Minister considers, therefore, that a temporary permission will do no harm to anybody, and that it can be related very well to the present lease of the shop.

" Accordingly, the Minister has decided to allow the appeal to the extent that he grants permission for the premises in question to be used as a ladies' hairdressing establishment subject to the following conditions:—

" (1) That the premises shall not be used for any other purpose (including any other purpose within Class I of the

Schedule to the Town and Country Planning (Use Classes) Order, 1950).

"(2) That the said use shall cease at the expiration of a period ending on August 9, 1955."

[By courtesy of the Town Clerk, Hastings.]

Change of Use from Builders' Yard and Joiners' Workshop to Light Industry

The following is an extract from the letter of the Minister of Housing and Local Government, dated April 25, 1952, following two appeals against—

(a) a determination that the proposed use of land at Nearway Road, Burnham, for storage and repair of motors, dynamos and switch gear would constitute development within the meaning of the Act; and

(b) a refusal to grant planning permission for the said uses and for the reversion to living accommodation of one room in the house, previously used as a shop.

"The premises were at one time occupied as a laundry, but in 1946 they were taken over by Messrs. D. Flintoff, Ltd., who conducted a builders' and joiners' business on the site until comparatively recently. The appellants are now the prospective purchasers of the whole site.

"On the first appeal the point at issue is whether the appellants' business would constitute a material change of use for which planning permission is needed. The Minister is satisfied that the last previous use was as a builders' yard with ancillary buildings and one building used as a joiners' workshop ancillary to the builders' business. He is further satisfied that the appellants' intended use of the site (and he notes that they will not need the light storage rack and open storage bins) is a light industrial use within Class III of the Use Classes Order. The appellants' proposal represents, therefore, a material change in the use of the premises and as such planning permission is required. The Minister determines accordingly.

"The Minister has gone on to consider whether planning permission should on merits be granted for this change and for the reversion to living accommodation of the room in the house, now used as a shop. He does not consider that the particular use proposed by Messrs. T. Finch & Son would appreciably affect the surrounding houses, but a substantial extension or alteration of this use would be liable to do so, and quite apart from this, the way should be kept open to make the area ultimately entirely residential. The appellant

does not propose to erect new buildings but to use buildings that already exist. In these circumstances the Minister considers that the proper course is to permit the proposed industrial use but only for a limited period. He has accordingly decided to permit the reversion to use as living accommodation of the room in the house now used as a shop without limit of time and to permit the use of the site, including the buildings other than the dwelling-house for the storage and repair of motors, dynamos and switch gear for a period of 10 years from the date of this letter, subject to the following conditions—(1) No machines or materials of any kind shall be stored in the open yard. (2) The use shall be discontinued at the expiration of the permitted period."

[By courtesy of Messrs. E. & C. Bowyer, Chartered Surveyors, Slough.]

Builder's Yard and Joinery Works—Continued Use and Change to Industrial Use

The following is an extract from the letter of the Minister of Housing and Local Government, dated April 2, 1952, allowing an appeal against the conditions imposed by the Wembley Borough Council in granting consent to the continued use of land at Lulworth Avenue, Wembley, as a builder's yard and joinery works. The conditions limited the consent to five years from June 6, 1951, and required that the use should then be terminated and any works necessary to the reinstatement of the land should be carried out. The conditions were imposed on the ground that the site will be defined as residential in the county development plan.

"Your council did not wish the appellants' use of the site to become permanently established since they considered that the builder's yard and joinery works were inappropriately sited; moreover, it was thought that a permission without time limit might lead to the introduction on the site of an industrial use of greater intensity.

"The Minister has considered with care all the facts and representations before him. The appeal site, it is noted, is the firm's central depot for the storage of building materials and for joinery work in connection with their building operations and housing repair work. The use as a whole is clearly not an industrial use, and in the circumstances any use of the site wholly for industrial purposes would require planning permission. The yard, of many years' standing, has fulfilled a local need and, so far as can be foreseen, will continue to do

so; a time limit on its continued use would not, in the Minister's opinion, be justified.

"Accordingly, the Minister has decided to allow the appeal and he hereby discharges the conditions imposed by your council."

[By courtesy of the Town Clerk, Borough of Wembley.]

Reservation of Land for Re-Location of Non-Conforming Industrial Users—Condition of Personal Use

The following is an extract from the letter of the Minister of Housing and Local Government, dated March 29, 1952, allowing an appeal against a condition imposed by Staines Urban District Council in granting permission for the erection of a factory building on land at David Road, Poyle. The condition under appeal was "that this permission shall enure for the benefit of the applicants only"; and the reason why the council imposed the condition was that "it is intended that land at Poyle Industrial Estate (of which the appeal site forms part) shall be reserved in the county development plan for the relocation of non-conforming and similarly placed industrial users within the County of Middlesex."

"The Minister has stated on several occasions that it is his policy, in pursuance of the Government's intention to restrict the further industrial growth of London, to support local planning authorities in and around London in their efforts to reserve land for the re-accommodation of local industries which are wrongly sited. This policy has led him in the past to uphold local planning authorities in their refusals of planning permission to firms coming from outside the London area. He does not feel, however, that this policy justifies the imposition of a condition such as that which the local planning authorities have imposed in the present case. He agrees that the condition imposes on the appellants a restriction which is unwarranted in all the circumstances. He is satisfied that the right course is to allow the appeal, and he accordingly discharges the condition."

[By courtesy of Messrs. Wright & Co., Chartered Surveyors, Hillingdon.]

Petrol Service Advertisement Sign

The following is an extract from the letter of the Minister of Housing and Local Government dated March 27, 1952, dismissing an appeal against the refusal of the Cambridgeshire

County Council to permit the display of a double-sided petrol service sign on the forecourt of Ness Garage, Burwell, Cambridgeshire.

"The Minister observes that the proposed sign would be erected in a prominent position in the forecourt of a garage in a village. He notes that the surrounding locality is in the main residential.

"In the Minister's view, the display of the proposed sign would be prejudicial to the amenity of this part of the village, by reason of its size, height and prominent position.

"The Minister accordingly dismisses the appeal."

[By courtesy of the County Planning Officer, County of Cambridge.]

Erection and Display of Large Direction Sign

The following is an extract from the letter of the Minister of Housing and Local Government dated March 31, 1952, allowing an appeal against the refusal of the Cambridgeshire County Council to permit the display of a direction sign measuring 6 feet 3 inches by 1 foot 3 inches, on land at Duxford, Cambridgeshire.

"The Minister observes that the sign, which is required to direct drivers of vehicles using a Class I road to a factory in an unclassified road, would be affixed to the two supports of a pylon situated at the junction of the two roads, in a flat, rural area. He notes that the local planning authority would be prepared to allow a sign measuring 2 feet 1 inch by 6 inches, but that the appellant considers that a sign of this size would not be adequate for the purpose required.

"In the Minister's view, the display of this direction sign, which would have the appearance of being little more than a tie connecting the two poles, would not be prejudicial to the amenity of the locality.

"The Minister, accordingly, allows the appeal, and grants consent for the display of the sign as shown on the plans submitted by the appellant, subject to the condition that the display of the sign shall be permitted for three years."

[By courtesy of the County Planning Officer, County of Cambridge.]

Temporary Permission for Industrial Use in Residential Area

The Minister of Housing and Local Government has conditionally allowed an appeal against the refusal of Chislehurst

and Sidcup Urban District Council to permit the use of existing premises behind Birkback Road, Sidcup, for light sheet metal work.

Permission was refused because the Council thought the development would be detrimental to the amenities of a predominantly residential locality and would conflict with proposals likely to be included in the county development plan.

At a local inquiry held into the appeal, the appellants stated that they wished to use the premises only temporarily until they were able to move to a new factory. Their machines would make little or no noise and there would be no panel beating or spray-painting.

The Minister agrees that it would be wrong for industry to be located permanently in this area, but he considers that the appellants should be allowed to use the ground floor of the premises for light sheet metal work, but for no other purpose, for five years only, provided no power-driven machinery other than one electric bench drill and one electric spot-welder be installed.

[By courtesy of the Public Relations Officer, Kent County Council.]

Correspondence

To The Managing Editor,

Journal of Planning Law.

Sir,

Declaratory Orders under Act of 1944

At [1948] J.P.L. 398, Mr. J. Muir Watt, Barrister-at-Law, referred to the effect of para. 17 of Sched. X to the Town and Country Planning Act, 1947, in relation to the compulsory acquisition of land subject to a declaratory order made under s. 1 (1) of the Town and Country Planning Act, 1944. The question at issue was whether para. 17 attracted the limits imposed by s. 9 of the 1947 Act which enabled an owner after 12 years from the designation (eight years in the case of agricultural land) to bring matters to a head by requiring that his land should either be purchased or freed from the designation.

Recently I had occasion to seek the views of the Minister of Housing and Local Government on this point and it may be of interest to your readers to know that the Minister states that he has been advised that s. 9 of the 1947 Act is not attracted so that there is no time limit upon the compulsory acquisition of land subject to a declaratory order which

has been preserved in force by para. 17, irrespective of whether or not the land is to be designated as subject to compulsory purchase in a development plan under Part II of the 1947 Act.

Yours faithfully,

M. LINDSAY TAYLOR,

Town Clerk, Borough of Tottenham.

Town Hall,
Tottenham, N.15.

TO THE MANAGING EDITOR,
JOURNAL OF PLANNING LAW.

Sir,

Section 80 certificates and Part VI claims

In March, 1950 (1950 J.P.L. 164) you published in full a query from us together with a comment by W. A. L. on this subject. We thought, therefore that your readers might be interested in the result of the case which caused us to raise the matter with you.

The answers to the specific queries are:—

(1) After taking more than a year to consider it the Minister stated that the certificate always had its value.
(2) A certificate once issued cannot be cancelled or withdrawn.
(3) The s. 58 claim can only be considered in respect of any additional value not covered by the certificate (that is obvious, of course, from the answer to (1)).
(4) and (5) do not now arise.

In our specific case we served a purchase notice under s. 19 on behalf of our client, the Minister confirmed it and we have agreed with the District Valuer that the acquiring authority should pay the full price.

Yours faithfully,

EDWARD & CHARLES BOWYER,

Slough. Chartered Surveyors.

TO THE MANAGING EDITOR,
JOURNAL OF PLANNING LAW.

Sir,

Points from Development Plan Inquiries
Burnley County Borough Council

As a reader of your Journal since its inception, I have read with interest the articles entitled "Points from Development Plan Inquiries" published from month to month and have noted the reference to my name in the Town Clerk's notes [1] on the recent local public inquiry at Burnley, at which I gave evidence on behalf of the brewery company and others.

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[1] *Ante*, p. 277.

The Town Clerk states in the concluding paragraph that no legal or practical points of any great note emerged from the inquiry, but I know of no development plan on which a matter of greater technical or "practical" importance arose than in this case. The point in question is whether or not a local planning authority in preparing its development plan should be permitted to earmark on the plan as proposed public open spaces areas which are known to constitute potential clearance areas under the Housing Acts, regardless of their size, shape, location, distribution or suitability for any specific recreational purpose and without even having considered the particular recreational purpose for which the land could best be used in the interests of the community.

Evidence submitted at the Burnley inquiry revealed that the plan contained several proposed public open spaces in which the circumstances were as outlined above and it was submitted on behalf of the objecting brewery company (more than a dozen of whose licensed premises were situated in these areas) that quite apart from the unnecessary and/or premature injurious affection which they (the objectors) would suffer, the reservation as proposed open spaces of these areas (which in the main are situated in the out-dated residential areas surrounding the central part of the town and are much more extensive in area than would normally be required), would seriously embarrass the local planning authority itself when drawing up detailed plans for the redevelopment of these areas in the future, in that their shape, size, location and distribution would undoubtedly prejudice the proper detailed planning of the lines of future streets and development patterns in the vicinity.

Surely this question as to whether or not a local planning authority should be permitted to include proposed open space reservations *ad lib* in a sea of residential or other building areas without prior consideration as to the pattern of future building and street development in that area is, in the eyes of every planner, a technical or "practical" point of *considerable* importance, and as it arose in the case of Burnley to an extent which I personally have not witnessed on any other development plan submitted under the Act, I'm sure your readers will agree that it is wrong to suggest that no "practical" point of any importance emerged in this case.

Yours faithfully,

W. Dobson Chapman,

Town Planning Consultant.

Macclesfield.

Practical Points

All questions for consideration should be addressed to "The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of the replies.

367. *Development charge—erection of buildings on land added to curtilage*

Clients of ours have erected two storage nissen huts within the curtilage of a large omnibus depot. The cube of the two huts is well within 10 per cent. of the main premises. The site of the huts was not within the curtilage at the Appointed Day, but was when planning permission was given for the first hut in 1950.

In a claim under Part VI of the Act, the land was described as "storage land" and, although not actively used at the time owing to the dereliction of buildings during the war, it had been used to store fodder in connection with stables. Under the terms of Press Notice CLB/42, ([1952] J.P.L. 42) a development charge is clearly not payable on the building operation, that is, the erection of the huts, but only on the change of use of the land in bringing it within the curtilage since the Appointed Day if this may be considered material. We think it may not.

The file is now with the District Valuer, who does not appear to appreciate the distinction, and has spoken of the cost of construction in arriving at a charge, which, in our view, is irrelevant. [L. & S.]

ANSWER

The basis of CLB/42 is that when land is added to the curtilage of a building, two issues are involved: (i) the improved value of the land due to any change of use, and (ii) its improved value due to its availability for the exercise of the enlargement tolerances. For example, an allotment adjoining a factory which has no land available for extension may be taken into the curtilage of the factory, *e.g.*, as open storage and would also be available for an extension of the

factory free of development charge within the enlargement tolerances.

The Board will take both these factors into account in assessing development charge for the change of use.

The alternative would be to pay development charge in respect only of the change of use of the land, and to pay a further charge for each and every extension to the factory on the added land as it occurs, and without regard to the tolerance.

If there is no change in the use of the added land, *e.g.*, land used for storage is added to the curtilage of a building used for storage, I agree that in terms of CLB/42 no question of development charge arises in respect of an enlargement within the exemption tolerances. [W. A. L.]

368. *Development charge—erection of buildings on land added to curtilage*

A brewery company proposes to purchase a plot of land used for horticulture adjoining their brewery, and it is intended at some future time to erect a bottling shed on this plot to form an outbuilding for use in connection with their present brewery premises. The buildings comprising the brewery were all in existence on July 1, 1948.

We consider that such purchase and the taking down of the dividing boundary by the brewery thereafter will have the effect of increasing the curtilage of the brewery by the amount of the area of this plot of land, so that when the bottling shed is eventually erected the company will be able to carry out such erection free from liability for development charge by virtue of art. 3 of the General Development Order, 1950, and para. 1 (iv) under Class VIII in Part I of the First Schedule thereto and the proviso to that sub-paragraph. The work will be an extension to the original brewery buildings in accordance with the above proviso within the curtilage of the brewery at the date when the work is effected.

On the other hand, we feel that the change of use of the plot of land from horticulture to part of the brewery premises will amount to development and will give rise to assessment of development charge.

Your confirmation or otherwise of our opinion is sought, as a contrary opinion has been expressed to the effect that, because the erection of the bottling shed will not take place within the curtilage of the brewery as it existed on July 1, 1948, the erection of the shed will amount to development and

will give rise to liability for development charge, quite apart from any such liability which will arise on change of use of the plot of land to which we have referred above. [B. S. & C.]

ANSWER

My own view is that the Third Schedule enlargement tolerance could not be exercised on land added to the curtilage after the appointed day, but the arguments are by no means conclusive.

The position is dealt with in CLB/42 ([1952] J.P.L. 42), under which the development charge for change of user of the horticultural land would take into account the possibility of the land being used for the exercise of the Third Schedule tolerance. [W. A. L.]

369. *Development charge—replacement of war-destroyed church, etc., on new site*

A new church, Sunday-school, etc., is shortly to be erected to replace similar buildings demolished by enemy action.

By arrangement with the local authority the old site has been exchanged for a new one. The sites are about half mile apart and values of them have been agreed.

Is a development charge attracted? Or can it be said Part 1 of Sched. III of the Act is applicable? [R.D.]

ANSWER

The answer depends upon whether s. 82 (4) applies to the new site and has been complied with. If not, a charge will be payable. See para. 90 of Practice Notes, First Series ([1949] J.P.L. pp. 252 *et seq.*). [W. A. L.]

370. *Development charge—relevance of price of land on sale*

A piece of land has been divided into three building plots.

On the first plot the owner of the land has built a house and the District Valuer has assessed the development charge thereon at £120.

The second plot has been sold for £275. Planning permission to erect a similar house to the one built on the first plot has been granted. The area of this land is almost precisely the same as the first plot. The District Valuer proposes to assess the development charge on this second plot at £190.

A third plot has been sold for a similar sum to the second

plot. The development charge has been assessed at £200 on this land.

The District Valuer takes the view that the purchase price of the two plots for building purposes determine the consent value of the land because on the sale it was assumed that permission would be granted.

It is difficult to see how the actual price paid is a criterion to determine the amount of the difference between consent and refusal value. If £125 represents the difference between the consent value and the refusal value on the adjoining plot it would appear that some figure should apply to the plot in which our client is interested. [E. J. & C.]

Answer

Unless the vendor is to pay the development charge the sale price of the land is not evidence of the consent value. If the purchaser is prepared to pay £275 plus development charge clearly the consent value might be fixed very much higher than £275. Clearly, also, the £120 assessed on the first plot was too low in the light of the subsequent selling prices of the two other plots. [W. A. L.]

371. *Near ripe land—liability of proceeds to income tax*

This company has established a "near ripe" ration of approximately 15 acres on an estate in Essex. Prior to the war we built approximately 25 houses on this land, and the roads and sewers, etc., were laid on the remainder. In 1939 building was stopped, and now through force of circumstances we are unable to continue; since we cannot sell the land without losing our "near ripe" ration we propose to sell several plots and allow a sub-contractor to build the houses for us against the purchaser's licences, and the balance of the ration will be left until 1953 when payment will be made for our loss.

The following points have now been raised by our accountants:—

1. In view of the changed circumstances can we claim that the estate is an investment and not the stock-in-trade of a building company, thus making both the current sales and the payment from the Central Land Board the realisation of a capital asset, and as such, not liable to tax?

2. In the event of the proceeds of the sales and Central Land Board payment being taxable, is there any provision for

spreading the compensation over a period, as the effect of a lump sum payment for what is virtually our chief asset being included in one year's trading will be disastrous from a taxation point of view? We contend that had the 1947 Act not been passed we should have been able to regulate our sales of land over a period, whereas now we are in effect to have a "forced" realisation of 90 per cent. of our asset (the unrestricted value less the existing use value).

3. If the payment of a development charge on land cannot be set off as an expense for taxation purposes, but is regarded as an enhancement of the capital value, surely the converse, namely, compensation for loss of development value should be regarded as a capital payment also? [A. E. B. C.]

Answer

Whether the land referred to can be treated as an investment, and not as stock-in-trade of a building company, or of an investment dealing company, depends on all the facts of the case. To be able to advise with any degree of accuracy, it would be necessary to see the company's memorandum of association, to have details of its general activities, and of its special activities in relation to the land in question, since at the latest 1939, and a full explanation of the circumstances which have prevented the company from building on the land and which have induced the company to sell. The company's accounts would also be relevant to show whether the land has continued to be treated as stock of the company's business, or whether it has at some time been transferred to capital account. Even with all this information available, an answer could not be given with certainty, as the question whether a company is trading is one of fact, on which different minds could come to different conclusions on the same set of facts.

However, on the material available, the best answer which can be given is as follows: On the assumption that the company is still trading as a builder elsewhere, it is difficult to find any reason for saying that the land here in question is not stock-in-trade of its business. Stock-in-trade does not cease to be such because it is not possible to sell it or deal with it in the way originally proposed. The present case bears a strong resemblance to that of *Johnson* v. *Try* [1946] 1 All E.R. 165, where a builder sold partly-developed land because of a refusal of development under the Restriction of Ribbon Development Act. He sought to escape assessment on the

compensation under the Act, but his argument failed. At no time did he go so far as to suggest what seems to be the argument in this case, that because circumstances prevented development of the land, therefore the land had become an investment, and its sale was not a sale of stock-in-trade.

If the view expressed above is correct, that the land remains part of the company's stock-in-trade, then both proceeds of sale and payments by the Central Land Board are receipts of the trade, and liable to inclusion in computing the company's profits for assessment to tax. There is no provision in the Income Tax Act for spreading the compensation over a period. A payment of a development charge on land, made by a building company in the course of its trade as such, is an allowable expense in computing its trading profits. [X. Y.]

372. *Purchase notice—requirement of application for planning permission*

We are now dealing with a case which involves two plots of land, which are the sites of houses demolished during the war by bomb damage. Our client is left with these sites, which are subject to redevelopment in about 10 years, when compulsory acquisition will take place. When inquiry was made as to the type of development which will be permitted we were informed that permission would be granted for temporary development, but that no definite decision could be given unless specific application is made to the authority.

We desire to serve a purchase notice on the authority, for there is nothing that could be erected of a temporary nature which would be in any way profitable. Is it necessary to submit plans of permanent development, which we know will be turned down, before we can proceed with the purchase notice?

Our client is in a very poor financial position and could not stand the expense of preparation of plans which are useless. In any case the value of the sites probably does not exceed £70 or £80.

A request to the authority that they purchase by private treaty has been of no avail. Is there any sure and inexpensive way of forcing the authority to purchase these sites?

[W. & D.]

ANSWER

Planning permission must have been refused, as a condition precedent of the service of a purchase notice under s. 19 of the 1947 Act. I would suggest the making of an "outline

application " for planning permission, under art. 5 (2) of the General Development Order, which should not involve the applicant in much expenditure. It is assumed that this case is subject to a direction under Article 4 of the General Development Order, 1950, restricting permitted development: if not, planning permission is not necessary under Class XI and a purchase notice could not be served. [J. F. G.]

373. *Requisitioned land—claims on £300 million fund*

We notice with interest the report of the development value appeal by the Atlas Assurance Co. Ltd. (noted *ante*, p. 238). The Lands Tribunal decision therein regarding the effect of s. 89 of the Act would appear to be far-reaching in its effect on the number of similar cases involving requisitioned property, which must still be outstanding.

S. 89 (1) of the Act deals with the special case of property held under requisition on the appointed day, and by reference to s. 61 (5) provides for the calculation of restricted value of such a property, " in the state in which it was immediately before the beginning of the period of requisition."

The Tribunal rule that the word " state " refers to the *physical condition* of the property and not its *use*. However, in Part 11 of the Explanatory Memorandum on the Act (H.M.S.O. 1948) prepared by the then Ministry of Town and Country Planning, the explanation of s. 89 given on p. 71 reads as follows:—

" The effect of the section is to ensure that for the purposes of Part VI of the Act the ' existing use ' of land of this kind is taken to be the use to which the land was put before the date of requisition, and not the use to which it is being put on the appointed day by the requisitioning authority."

It appears to us that the above statements cannot be reconciled one with the other. [N. F. D. & M.]

ANSWER

I respectfully agree with the Lands Tribunal that s. 89 (1) of the 1947 Act has nothing to do with use. The " state " of the land would not ordinarily be taken to include a reference to the way in which it was being used. The Explanatory Memorandum issued by the Ministry of Town and Country Planning in 1948 is not authoritative. The use and the legal rights as to use on the appointed day would be " incidents " within s. 61 (5) to which the interest in land was subject. [W. A. L.]

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"Planning Law" Notes

The Government's announcement, in reply to a Parliamentary question, that up to 80 per cent. of the face value of a claim on the £300 million fund may be set off against development charge (see *post*, pp. 408–9), will be very welcome to property-owners. In the case of "near ripe" owners it has, of course, been possible to set off development charge against Part VI claim for some time past, but the "logging-up" arrangements which have hitherto related only to near ripe land will now apply generally, subject to the 80 per cent. limit. This is a logical sequel to the announcement in February last (*ante*, p. 226), that the total of claims on the £300 million was estimated to be not more than £350 million, of which the near ripe schemes would absorb about £100 million.

The Central Land Board have issued a press notice drawing attention to the matter. It appears from this that the claim in respect of which the logging up is done need not necessarily relate to the land which it is proposed to develop.

A debate on the Act of 1947 in the House of Lords on May 27 (see *post*, p. 407) was enlivened by criticisms of the Act from Lord Quibell, a member of the Labour Party, and by some remarks from Lord Woolton, chairman of the Conservative Party, dissociating himself from a statement in that party's election manifesto that the Act would be "drastically altered."

Mr. J. F. Garner writes: "The point in *Hanily* v. *Minister of Local Government and Planning* (*ante*, p. 345), which seems to me to be of the most general interest and importance, is that the case establishes beyond all doubt that anyone is entitled to make an application for planning permission under section 14 of the 1947 Act, so far at least as a person who is genuinely interested in the land is concerned. Whereas it is reasonable enough for a local planning authority to inquire as to the interest of the applicant in the parcel of land concerned,

it seems that they would not be entitled to refuse permission (or *a fortiori*, refuse to entertain the application) simply because the applicant had no equitable or legal interest in the subject-matter of the application."

The Lands Tribunal have allowed two further appeals against determinations of development value by the Central Land Board for the purposes of claims on the £300 million fund (*post*, p. 413).

A further claim for compensation under s. 22 of the Act of 1947, following revocation of planning permission, has been decided by the Central Land Board (*post*, p. 414). As in the previous case (noted *ante*, p. 158), the Tribunal rejected a claim for loss of profits attributable to a business which had not in fact been established at the date when permission was revoked.

Another case in which there is a claim for loss following on a revocation of permission is also reported (*post*, p. 415), but the consent here was an interim development permission, which was revoked in 1947 under the Act of 1943. The repeal of that Act by the Act of 1947 does not affect its application to compensation in respect of an order made before the 1947 Act was passed—see the proviso to s. 113 (2).

The address of the South-West London Regional Office of the Central Land Board and War Damage Commission is now 246 Stockwell Road, Brixton, S.W.9 (telephone Brixton 7777) instead of Eden Street, Kingston-on-Thames. The new office is at the junction of Stockwell Road and Brixton Road.

The Kent County Council have now made building preservation orders in respect of 11 windmills in the county, on the grounds that they are of special architectural interest and in a state of repair to merit preservation.

The decision of the Minister has now been given on an application by the National Coal Board for permission to work coal in the Trent Valley, where the prospects of subsidence from the working gave rise to opposition from several public authorities and raised points of considerable complexity.

We propose to publish the decision in our next issue, together with an article by the Deputy Town Clerk of Nottingham on the circumstances of the case and the issues involved.

The Court of Appeal have confirmed a decision of the Lands Tribunal as to the proper basis of compensation for the compulsory purchase of a church hall and institute, the greater part of which had been leased, at the date of the notice to treat, for purposes unconnected with the church (*post*, p. 410).

The case is of special interest because it appears to be the first time that the interpretation of r. (5) in s. 2 of the Acquisition of Land, etc., Act, 1919—the favourable "equivalent reinstatement" basis of compensation—has come before the courts since that Act was passed 33 years ago.

The hope expressed in our May issue (*ante*, p. 252) that Mr. Desmond Heap would be provoked by the letter published in that issue (at p. 303) into further comments on the control of advertisements, has now been fulfilled : see p. 388, *post*.

We also include in this issue a general review of the working of advertisement control (*post*, p. 392).

The Minister of Housing and Local Government has reappointed for a period of one year the chairman, Mr. R. G. Gosling, and five other members of the development corporations for the New Towns of Welwyn Garden City and Hatfield. Mr. P. E. Longmore, formerly Clerk of the Hertfordshire County Council, has resigned from membership of the two corporations, of which he has been a member since July, 1948.

The two corporations have the same membership.

The Central Land Board have from time to time warned persons with a claim on the £300 million fund in respect of builders' near ripe land that any assignment of the right to the payment from the fund would result in loss of the preferential treatment: see C.L.B./9 ([1948] J.P.L. 562–3), and Central Land Board pamphlet House 1.

In correspondence published at p. 343, *ante*, and p. 408, *post*, the Central Land Board emphasise that this result ensues if the Part VI payment is assigned, charged, or in any way encumbered.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the MANAGING EDITOR, *Journal of Planning Law*, 3 CHANCERY LANE, LONDON, W.C.2. *Every attempt will be made to return drafts or unsuitable copy but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Valuations under the Town and Country Planning Act, 1947

By Claude Bennett, F.R.I.C.S., F.A.I.

A. Compensation for Compulsory Purchase

One of the principal objects of the 1947 Act is to increase the powers of Ministers, local authorities and statutory undertakers in respect of the compulsory purchase of land, and it is for this reason that paras. (*b*) and (*c*) of s. 5 (2) enable a local planning authority to designate land in the development plan as the subject of future compulsory acquisition.

This designation can, however, be carried into effect only if the local planning authority is able to satisfy the Minister that compulsory acquisition will, in fact, take place within seven years in the case of agricultural land and ten years in any other case, and also that one of the following conditions apply: —

(a) that the land is likely to be required by a Minister, local authority or statutory undertaker; or

(b) that the land is included in or associated with an area of comprehensive re-development; or

(c) that the land so designated is such that the local planning authority considers that it should be acquired so that its use can be made to conform with the use shown in the development plan.

These conditions are self-explanatory, but it should be noted that the land envisaged in (b) will include not only the area in which a bad lay-out prevails, or in which the majority of the houses are of a sub-standard pattern, but also an area of extensive war-damage, the proper re-development of which calls for a comprehensive scheme.

The principle of designation is to provide the means by which compulsory acquisition can be authorised under ss. 37 and 38 and also the means by which, broadly speaking, the procedure under the Acquisition of Land (Authorisation Procedure) Act, 1946, can be applied.

Its effect, however, is of particular importance to the valuer, not only at the present time, but also in the future, as whilst the development plan itself may or may not contain designated areas, it is to be expected that local planning authorities will be " earmarking " land in this way in subsequent amendments, and whilst it does not follow that because

land has been designated it will automatically be acquired, the possible future threat of acquisition must, of necessity, tend to sterilise sales and thus depreciate the market value of the properties within the area concerned.

Compensation in respect of compulsory acquisition will be in accordance with Part V of the 1947 Act of which the following examples may serve as an illustration, but it should be noted that any depreciation in value due to the designation is not to be taken into account in arriving at the value : s. 51 (3) of the Act.

(a) Property attracting " cost of works " payments

A converted value payment applies in those cases where the compulsory acquisition is of property in respect of which a " cost of works " payment would otherwise have been payable under the War Damage Act, 1943 (s. 14).

The basis of compensation is the value of the premises on the assumption that all war damage has been made good (s. 53 of the Act of 1947), so that if the premises are freehold and at the date of the service of notice to treat there are no other interests concerned, the property will be valued with vacant possession, but subject to the notional lease as required by s. 52. The war damage payment goes to the acquiring authority.

Example 1

In September, 1948, notice to treat is served on the owner of a freehold site in the best residential area of a seaside town. The site was originally occupied by an attractive detached house built in 1936, but totally demolished by enemy action in 1944. The war damage classification is that of a " cost of works " payment. The 1939 value was £1,500 and, rebuilt, the property would fetch £4,500 or a rental on full repairing lease of £275 per annum.

Valuation

Capital value	£4,500	
Interest at 5%	£225 p.a.	
Notional lease rent	£225 p.a.	
Y.P. 5½ years at 5%	4.7	=£1,058
Reversion to capital value	£4,500	
Present value of £1 in 5½ years at 6% ...	.72	=£3,240
		£4,298
Compensation, say		£4,300

In the case of a property which has not suffered total destruction, it may be found that at the date of the service of notice to treat whilst a part of the war damage still remains to be made good, structural alterations or additions have, in fact, been carried out, and in this instance, compensation will be assessed on the higher of two figures calculated on the following basis:—

(1) The value of the property with the damage made good and with the structural alterations or additions removed, or

(2) The value of the property with the war damage not made good in so far as the making good would have involved the removal of the works carried out.

The difference in value in these two cases would be accounted for by the amount by which the property has appreciated or depreciated by reason of the works carried out.

Where the freehold interest is subject to a lease and a conditional notice of retention has been served, the valuation of this leasehold interest will also be required. It is, however, to be based on the assumption that the conditional notice is to have no effect but that the leasehold interest will continue for the remainder of the term unexpired as at the date of the service of notice to treat.

Example 2

Similar circumstances as in Example 1 except that the freehold interest is subject to a lease for 99 years from September 29, 1936, at a ground rent of £15 per annum.

Valuation

(1) *Leaseholder's Interest*

Notional lease rent (as before)	£225 per annum.			
Deduct Ground rent	15			
Profit rent	£210			
Y.P. 5½ years at 5% ...	4.7	=	£987	
Reversion to full rental value	£275 p.a.			
Deduct Ground rent	15			
Profit rent	£260			
Y.P. 81 years at 6½% and 2½%	14.5			
	£3,770			
Present value of £1 in 5½ years at 6½%	.7		£2,639	
Leaseholder's compensation		=	£3,626	say £3,625

(2) *Freeholder's Interest*

Freehold Ground rent	£15 per annum
Y.P. (well secured) 4%	25
Freeholder's compensation =	£375

(b) Value Payment Cases

The basis of compensation under the 1944 Act, *viz.*, the "certified after damage value," is no longer applicable.

Property classified as a "total loss" is to be valued on the basis of the "existing use" value which would include the benefits of the rights provided in the Third Schedule of the 1947 Act.

Generally speaking, the valuation should not present much of a problem. So far as the notional lease is concerned, it will be difficult to visualise a rental passing during the period between the date of the service of notice to treat and January, 1954, as there would appear to be little to attract a tenant on the terms and period envisaged in the notional lease. In badly "blitzed" areas particularly, cleared sites of small houses may abound and, apart from any question of a tenancy, there appears, generally, to be little or no demand for their purchase.

Example 3

Notice to treat is served on July 21, 1948, in respect of a small freehold site, measuring 15 feet by 80 feet, situate in a poor and badly damaged working-class area. Prior to destruction by enemy action, the site contained a terrace house which has always been owner-occupied. The war damage classification is that of a "total loss." Assess the compensation payable.

Valuation

Site area 15ft. × 80 ft. = 1,200 f.s. at 2s. =	£120
Present value of £1 in 5½ years at 5½ ...	.74
	£89, say £90

(c) Requisitioned Land

The assessment of compensation for requisitioned land will, in general, be calculated as if the land could be sold in the open market as if the land were not requisitioned land, and in those cases where the property would normally carry the right to "vacant possession," the principles of the notional lease will apply.

Any damage done during the period of requisition is not to be taken into account in assessing the value, and conversely, works of improvement carried out during that same period are to be discounted as in the following example, except in those cases where the owners have themselves paid for them.

Example 4

Prior to its requisition in 1944, a small church hall was used with success as a light factory, this use not being in contravention of previous planning control. Since its requisition the premises have been converted by the requisitioning authority into a four-roomed bungalow. The shortage of factory premises is acute, and were it not for this conversion the premises would fetch £7,500 with possession and command a rental on full repairing lease of £450 per annum.

The freehold is held subject to a lease from December 25, 1939, for a term of 21 years, at a ground rent of £20 per annum.

The date of service of notice to treat is January 1, 1950.

Valuation

Capital value	£7,500	
Interest at 5%...	£375 p.a.—notional lease rent	
(1) *Leaseholder's Interest*		
Notional lease rent	£375 per annum	
Deduct Ground rent	20	
Profit rent	£355	
Y.P. 4 years at 5% and 2½%	3.4	= £1,207
Reversion to estimated ...	£450 per annum	
Deduct Ground rent	20	
Profit rent	£430	
Y.P. 6 years at 8% and 2½%	4.2	
	1,806	
Present value of £1 in 4 years at 8%	.74	= £1,336
		£2,543
Leaseholder's compensation, say		£2,500

(2) *Freeholder's Interest*

Freehold Ground rent ...	£20 per annum			
Y.P. 10 years at 4%	8	=	£160	
Reversion to estimated ...	£450 per annum			
Y.P. perp. at 7%, say ...	14			
	£6,300			
Present value of £1 in 10 years at 7%	.5	=	£3,150	= £3,310
Freeholder's compensation, say				£3,300

(d) "Equivalent reinstatement" basis

Whilst the 1947 Act amends the basis of compensation in respect of compulsory acquisition, s. 51 operates to include "the cost of equivalent reinstatement" as being the appropriate basis of assessment in those cases where rule (5) of the Acquisition of Land (Assessment of Compensation) Act, 1919, applies.

The type of property which will be so treated will include such buildings as clubs, schools, public halls, etc., and the "reasonable cost" whilst being assessed on the basis of the provision of a site and building comparable with that being acquired, will have regard to any redundant features present in the existing structure.

War-damaged property attracting a "cost of works" payment will be treated in exactly the same way as a normal converted value payment, and the cost of equivalent reinstatement will be calculated on the assumption that all war damage has been made good.

Example 5

A small Methodist church is included in an area of comprehensive redevelopment and a compulsory purchase order has been made, and notice to treat served. The site is required for industrial purposes, but the acquiring authority have indicated that they are prepared to offer in exchange a comparable site within the area. The existing building which is 40 years old, has a cubic capacity of 100,000 cubic feet and enjoys a regular congregation. Calculate the compensation due.

Valuation

New Building 100,000 f.c. at 3s. =	£15,000	
Add: Fees, say	£1,200	
Add: Removal expenses, disturbance, etc., say	£750	
Compensation payable	£16,950	say £17,000

(e) Other Cases

Valuations in respect of properties compulsorily acquired will, in accordance with Part V of the Act, be based on "existing use," subject, if applicable, to the notional lease, but with the benefits derived from the Third Schedule. The Act, however, expressly precludes the application of the notional lease in the case of agricultural land.

Example 6

A tobacconist shop with two floors over is in a secondary trading position off the High Street, in a provincial town. The freehold interest is subject to a full-repairing lease expiring in July, 1950, at a rental of £100 per annum. The rental value is £200 per annum, and the rateable value £80. Notice to treat was served in July, 1948.

The capital value is £3,500. The acquiring authority have indicated that they are prepared to grant a lease to the present leaseholder of a similar shop within a short distance of this parade.

The average net profit amounts to £500 per annum and it is estimated that the stock in hand is worth £2,000.

Calculate the freeholder's and leaseholder's interests.

Valuation

Capital value ...	= £3,500	
Interest at 5% ...	= £175 p.a.—notional lease rent	

(1) *Freeholder's Interest*

Rent reserved under lease	£100 p.a.	
Y.P. 2 years at 5 % ...	1.9	=£190
Reversion to notional rent	£175 p.a.	
Y.P. 3½ years at 6% ...	3.1	
	£543	
Present value of £1 in 2 years at 6%	.9	=£488
Reversion to capital value	£3,500	
Present value of £1 in 5½ years at 6½%	.7	=£2,450
		£3,128
Freeholder's compensation, say		£3,150

(2) *Leaseholder's Interest*

Notional lease rent	£175 p a.	
Deduct: Rent reserved ...	£100	
Profit rent ...	£75 p.a.	
Y.P. 2 years, say	1	=£75
Goodwill:		
Net Profit	£500	
Less: Profit rent	75	
	£425	
Y.P., say	1	=£425
Removal expenses, etc., say		£150
Leaseholder's compensation		£650

Example 7

A single-storied bottling factory is situate in the centre of an area which, owing to war damage, is now being redeveloped. Notice to treat is served in July, 1948. The factory, which covers the whole of the site, has a floor space of 10,000 f.s., and a cubic capacity of 300,000 cubic feet. The present owners paid the sum of £30,000 for the premises in January, 1947. Values in this area have not increased between this date and the date of service of notice to treat. The acquiring authority have offered an alternative factory, situate approximately half-mile distant, to be held on long lease at £2,000 per annum. Assess the compensation due:—

Valuation

Capital value	£30,000		
Interest at 5%	= £1,500	—	notional lease rent.
Notional lease rent	£1,500 p.a.		
Y.P. 6 years at 5%	5	=	£7,500
Reversion to estimated capital value ...	£25,000		
Present value of £1 in 6 yrs. at 6½%	.69	=	£17,250
			£24,750
Add: Removal expenses, possible small temporary loss of profits, say			1,000
Compensation payable			£25,750

Example 8

Similar circumstances as in Example 7, except that adjoining the factory building is approximately a quarter of an acre of vacant land, within the curtilage, bought in February, 1947, at a cost of £1,500, or the equivalent of 3s. per foot super. It was bought with a view to future expansion. The prospect of obtaining a licence within six years is remote. Calculate the compensation payable.

Valuation

Permitted tolerance "free" of development charge = 10% of 300,000 cubic feet or 30,000 cubic feet. Assuming that an extension would be of a similar height to the main factory the ground cover permissible would be $\frac{30{,}000}{30}$ = 1,000 f.s.

Notional lease rent (as before)	£1,500 p.a.	
Y.P. 6 years at 5%	5 =	£7,500
Reversion to estimated capital value ...	£25,000	
Present value of £1 in 6 years at 6½%	.69 =	£17,250
		£24,750
Add: Removal expenses, etc. (as before) ...		1,000
		£25,750
Add: Industrial value of land permitted by the tolerance:		
1,000 f.s. at 3s.	£150	
Present value of £1 in 6 years at 5½%	.73 =	110
Add: Remainder of land amenity value, say ...		40
Compensation payable		£25,900

Example 9

A detached office building occupying a site of 5,000 f.s. is in a wide main thoroughfare, the majority of buildings in which comprise Victorian houses now in use as office premises. The ground floor is let on F. R. lease for seven years from June 24, 1948, at a rental of £250 per annum, and the first floor is let to an insurance company on a three years' agreement from June 24, 1951, at a rental of £150 per annum exclusive. The top floor, which has always been used as a self-contained flat, is occupied by an employee of the owner on the service tenancy with no rent passing. The premises are freehold and Def. Reg. 68CA will not apply. The net floor

space on the ground and first floor is 1,000 feet per floor and 500 feet on the top floor.

The cubic capacity is 35,000 f.c., made up of 30,000 f.c. for the office user, and 5,000 f.c. for the residential portion.

Notice to treat was served on September 29, 1951. Assess the compensation due to the freeholder.

Valuation

Permitted tolerance = 10% of 35,000 f.c. = 3,500 f.c.

Tolerance for business user $\frac{30{,}000}{35{,}000} \times 100 = 86\%$ of 3,500 f.c.

Height of top floor = 10 feet.

Therefore available floor space on tolerance = 86% of $\frac{3{,}500}{10}$ = 300 f.s.

Total available open floor space = 350 feet super.

First Floor: Rent reserved	£150 per annum	
Less: Ext. reps. say	15 =	£135
Ground Floor: Rent on lease		£250
		£385
Add: Tolerance 300 f.s. at 1s. = say ...		15
		£400
Y.P. perp.		18
Compensation due		£7,200

[*To be continued*]

Advertisements and the Powers of the Executive

By Desmond Heap, ll.m., l.m.t.p.i.,

Comptroller and Solicitor to the Corporation of the City of London

I have read with interest in the May issue of the Journal of Planning Law the letter from Mr. W. J. Leaper, General Secretary, Solus Outdoor Advertising Association, Ltd., on the subject of the function of the Minister of Housing and Local Government in relation to the control of advertisements and I venture the following observations arising out of his letter. (The section references relate to the T. & C. P. Act, 1947.)

The use of land for the display of advertisements—including the use of any external part of a building not normally used for the display of advertisements (s. 12 (4))—constitutes the development of that land and, were it not for the special provisions of s. 32 (1), would require planning permission under s. 12 (1).

Section 32, however, places advertisements in a category apart, although not, as I hope to show, quite as apart as all that. Section 32 (1) provides that where the display of advertisements involves the development of land, planning permission for that development shall be deemed to have been granted provided always that the advertisements are displayed in accordance with Town and Country Planning (Control of Advertisements) Regulations, 1948. In deciding, under these Regulations, whether or not to grant consent for the display of an advertisement, I will, if it is thought helpful, admit at once that a local planning authority is limited, in the exercise of its discretion, to consideration of the interests of two things only and these are (a) amenity and (b) public safety. (Whether, in practice, this really constitutes any great restriction on the exercise of the local planning authority's discretion, is a matter which I doubt but to which I will refer later.)

An aggrieved applicant can appeal, under the Advertisement Regulations, 1948, to the Minister against the decision of

the local planning authority (reg. 20 (1)) and on such an appeal the Minister may (reg. 20 (4)) "allow or dismiss the appeal or may reverse or vary any part of the decision of the local planning authority, whether or not the appeal refers to that part, and deal with the application as if it had been made to him in the first instance." Again, if it is thought helpful, I will admit (especially in view of the use of the words "so far as appears to the Minister to be expedient in the interests of amenity or public safety" in s. 31 (1)) that the Minister, like the local planning authority, is bound by reg. 4 (1) and can exercise his discretion in an advertisement appeal only in the interests of (a) amenity and (b) public safety. In other words, it may well be that so far as both the exercise, in first instance, of a local planning authority's powers with respect to the display of advertisements is concerned, and also so far as the exercise, on appeal, of the Minister's powers with respect to such display is concerned,—that there is, in each instance, a restriction on the otherwise unfettered exercise of their respective discretions in that they must, in arriving at a decision, apply their minds solely to matters of amenity and public safety.

My article, "Land Planning and the Powers of the Executive" ([1952] J.P.L. 124) which induced Mr. Leaper's letter, did not specifically deal with development involving the display of advertisements and I confess that advertisements were certainly not uppermost in my mind when I prepared the article. Nevertheless, I find that I did, in para. 24 of the article, refer to *Associated Provincial Picture Houses, Ltd.* v. *Wednesbury Corporation* [1948] 1 K.B. 223 and, I think, made it clear in that paragraph that there may be cases in which, by statute, the discretion normally reposing in an administrative body is left not entirely unfettered but, on the contrary, is subject to limitations expressly mentioned in the statute and in this connection I quoted the remarks in that case of Lord Greene M.R. at p. 228. For the sake of convenience I will quote them again, italicising the words which I would now emphasise :—

> "When discretion of this kind is granted the law recognises certain principles upon which that discretion must be exercised, but within the four corners of those principles the discretion, in my opinion, is an absolute one and cannot be questioned in any court of law. What then are those principles? They are well understood.

> They are principles which the court looks to in considering any question of discretion of this kind. The exercise of such a discretion must be a real exercise of the discretion. *If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters. Conversely, if the nature of the subject-matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, the authority must disregard those irrelevant collateral matters.*"

I hope the foregoing makes it clear that it was never my intention to suggest that, so far as the display of advertisements is concerned, neither a local planning authority nor the Minister, in exercising their respective discretions to grant or withhold consent to such display or to grant consent subject to conditions, had a right to be moved by any considerations other than those touching the interests of amenity and public safety.

Having, as I hope, cleared that point, may I add that I do wonder whether the restriction imposed by reg. 4 (1) of the Advertisement Regulations, 1948, on the exercise of a local planning authority's discretion, or on the Minister's discretion, so far as the display of advertisements is concerned, is in practice (as distinct from theory) any real restriction at all. In other words, it would appear that even when a local planning authority or the Minister confine themselves (as they must) solely to matters of amenity and public safety when considering an application for permission to display an advertisement, they do not thereby suffer any appreciable restriction on their general right to exercise their discretion freely and in furtherance of whatever policy relating to land planning they have in mind.

In short, the question I ask is this,—When considering the display of an advertisement what interests other than those of amenity and public safety *need* a local authority consider? After all, many things can be brought within the twin spheres of amenity and public safety and some of them are particularised in reg. 4 (2) of the Advertisement Regulations themselves. Lord Justice Scrutton suggested how wide can be the meaning of "amenity" when he said in *Re Ellis and Ruislip-Northwood U.D.C.* [1920] 1 K.B. 343 that "It

appears to mean pleasant circumstances, features, advantages."

After consideration I have come to the conclusion that so far as the display of advertisements is concerned a local planning authority, and the Minister likewise, are able to exercise all the control they reasonably require for the furthering of whatever planning policy they have in mind whilst yet keeping their considerations exclusively confined to the interests of amenity and public safety, thereby satisfying the requirements of the Advertisement Regulations, 1948, and s. 31 of the Town and Country Planning Act, 1947.

Advertisement Control— Is it Working as Well as it Might?[1]

The control of outdoor advertising under the Town and Country Planning (Control of Advertisements) Regulations, 1948 to 1951, has now been in operation for nearly four years. The inevitable teething troubles which all new schemes are bound to encounter should by now have been overcome and it would seem therefore that this is a suitable time to review the operation of the Regulations to see whether the new code is working as well as it might.

Complex Regulations

The first difficulty which faced those whose job it is to work the new system was the complexity of the Regulations. Even today there must be comparatively few people who know their way about them with any degree of confidence. This complexity has undoubtedly been at the root of many of the teething problems and will, unless something is done to simplify the Regulations, in all probability continue to be a big factor in any future difficulties.

Despite their length and complexity, however, the Regulations contain little to ensure uniformity of control. This is not really a criticism of the Regulations, as the question whether or not an advertisement harms local amenities must, in most cases, be largely a matter of taste. However, it has inevitably meant that the administration of the Regulations has varied all over the country. In theory the local councillors, being the representatives of the local people, should know what the local people want, and after all it is the local people in the main who have to look at the advertisements if they are approved, so their wishes are important. In practice, of course, local councillors are not elected according to their views on advertisement control, with the result that, either way, their decisions do not necessarily accord with the views of the majority of the local citizens.

Appeals

On the other hand any wide divergences of practice in the administration of the Regulations should be corrected, in theory at least, by the Minister through his decisions on

[1] This article is included by kind permission of *The Local Government Chronicle*, in which it was originally published.

appeal. It is open to question, however, whether the Minister is dealing with appeals in such a way as to protect advertisers against the extreme local authority, and at the same time ensuring that nothing is permitted which is plainly an offence to amenity or public safety. The total number of appeals made since the Regulations came into force on August 1, 1948, up to December 31 last was 2,497. Of this number, 813 (or 32 per cent.) were allowed and 1,684 (or 68 per cent.) were refused. The figure of those allowed includes a number granted subject to conditions, but how many is not known.

The percentage of refusals has, however, varied considerably from year to year. In 1948 it was 40 per cent., in 1950 76 per cent., while last year it was 78 per cent. The percentage of refusals is not, of course, the sole criterion as to whether or not the present appeal machinery is working fairly in accordance with the principles of the Regulations. It may well be that most of the appeals ought never to have been made. The figures would seem to suggest, however, that the Minister is pursuing a policy of backing local authorities except in those rare cases where the local authority have obviously made a glaring mistake. If this is so the Minister is not protecting advertisers in the way he should.

It has been suggested by Mr. Desmond Heap in the *Journal of Planning Law* [2] that in these cases "The Minister is not there to dispense justice but to carry out a policy." Against this, however, it should be remembered that outdoor advertising is a perfectly legitimate business and plays an important part in the chain of distribution, a fact which was stated more than once in the House of Commons during the debates on the advertisement provisions of the Town and Country Planning Act, and that if the Minister does not protect advertisers from the extreme local authority nobody else can, as the Minister's decision is final. Moreover, it may be argued that the very fact that Parliament provided in s. 31 of the Act for the setting up of an alternative method of appeal to an independent tribunal instead of to the Minister shows clearly that Parliament intended that a balance should be held between the needs of a commercial and industrial community for outdoor advertisements, including signs, and the views of local councils on the safeguarding of amenity and public safety. As the Minister has taken power himself to decide appeals instead of establishing an independent tribunal, presumably it is his duty to dispense justice between the parties.

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[2] *Ante*, p. 137. See also *ante*, pp. 303–4, 388.

Special Control Areas

Undoubtedly one of the main objects of Parliament in establishing machinery for the control of outdoor advertisements was to clean up the rural areas and to protect the countryside from being spoilt in the future. It is clear too that Parliament wished also to give permanent protection to areas around such places as cathedrals, castles and other historic and beautiful buildings. Both these aims are gradually being achieved through the creation of areas of special control and so far 15 schemes have been approved, 11 by the Minister and four by the Secretary of State for Scotland. It is interesting to note here that 13 of these schemes were agreed between the local planning authority concerned and the advertisers before they were submitted to the Minister or the Secretary of State, as the case may be, which would seem to show that the advertisers have no wish to offend public opinion or taste by erecting advertisements in the countryside or in those areas where advertisements are clearly out of place.

While there can be no doubt that public opinion would support moves to protect the countryside against undesirable advertising, it is questionable whether the general public, if asked, would consider that the present system of control in commercial areas is either desirable or necessary. It is true that the Regulations provide for the erection of certain signs, mainly on commercial premises, without all the formalities and expense of obtaining consent from the local planning authority, but one wonders whether amenity or public safety would suffer to any great extent, if at all, if these classes were widened to allow, say, signs at greater height than 15 feet from the ground and the illumination of signs on commercial premises. There must be very many cases where an authority automatically grant consent to the erection of a sign above 15 feet because there is no other place to put the sign unless it is to appear ridiculous. So too consent is normally granted without question for the illumination of signs on shops, hotels, garages and the like. It is doubtful whether anything would be lost by making these extensions to the specified clauses for which express consent is unnecessary, especially when compared with the saving of time and money which would result to all concerned.

Fly Posting

Among the other objects which Parliament no doubt intended to achieve through a national code of advertisement control were the abolition of fly posting and excessive metal

plate advertising, and the general cleaning up of existing advertisements.

Fly posting, however, is still prevalent in many areas although planning authorities have wide powers under the Regulations to deal with this nuisance. The same applies to metal plate advertising, which is still spoiling the appearance of many villages.

Untidy and neglected advertisements also still abound although for the past three years all existing advertisements have been subject to the Standard Conditions, one of which provides that they shall be maintained in a clean and tidy condition.

Need for Greater Simplicity

Turning back again to the administration of advertisement control, there can be no doubt that as a result of the Ministry circular No. 1 of last year and the advice given to their respective members by the County Councils Association, the Association of Municipal Corporations and the Outdoor Advertising Industry Advisory Committee, there is now far more co-operation and good will between local authorities and advertisers. However, it would seem that the time has now arrived to consider whether the Regulations could not be made much simpler. It should not be beyond the powers of the Ministry to devise, in the light of the working of advertisement control since 1948, a set of Regulations which would give adequate protection to the interests of amenity and public safety but at the same time would be less costly to administer.

Summary

To summarise, it would seem that, due to the good will and co-operation which now exists between local authorities and advertisers, the Regulations are working as well as can be expected, but they would undoubtedly work better, and cost less to administer, if they were simplified. The area of special control provisions of the Regulations would appear to have started satisfactorily to achieve their purpose of protecting the countryside, but, on the other side of the picture, fly posting and excessive metal plate advertising is still prevalent. As regards appeals, it is open to doubt whether the Minister is holding a proper balance and whether justice is being dispensed. Lastly, it would seem that no harm would result to amenity or public safety, but considerable administrative saving would result if the " deemed " consents in commercial areas were widened.

Party Walls—A Further Note

By J. R. McLey Smith

Following upon previous articles on the subject of party walls ([1951] J.P.L. 193, 470) I have been asked to comment upon the case of *Upjohn* v. *Seymour Estates* [1938] 1 All E.R. 614, and append the following notes. The point is whether this case indicates that one of the owners of a party wall has a right, as against the adjoining owner, to protection of his property from the weather, for example if the adjoining building is demolished.

The first point to notice in this case is that apparently none of the earlier cases on party walls were cited.

The second point is that the court were dealing (inter alia) with the provisions of s. 38 (1) of the Law of Property Act, 1925; this section deals with the law of party walls from 1926 onwards and as the wall in the *Upjohn Case* was some 80 years old, in my opinion the transitional provisions (s. 39 (5)) should have been consulted, or if that section did not apply then the case law should have been applied. In any case it was apparently assumed (though this point was not mentioned) that this wall was owned on the basis of a tenancy in common, but there appears from the case no real evidence to support this assumption. Surely the wall could have been owned in any one of the four ways enumerated by Mr. Justice Fry in the case of *Watson* v. *Gray* (1880) 14 Ch.D. 192. For instance it might have been case No. 3 as the premises were situate in London and subject to the London Building Acts.

Thirdly, the plaintiff's right of support was withdrawn by the defendants' wall collapsing.

Fourthly, the judgment of Goddard J. (as he then was) did not specifically state that there is a class of easement known to the law as a "right to protection." His judgment was in the form of answers to three specific questions submitted to him, and his answers were as follows:—

1. The defendants did not trespass on the party wall separating their premises from the plaintiff's.

2. The plaintiff's premises and his moiety of the party wall were entitled to support from the defendants' premises, and their moiety of the party wall.
3. The defendants did withdraw support and cause damage to the plaintiff and his property.

Fifthly, the facts in the case can be distinguished from the facts in a normal case of this nature. In the *Upjohn Case* the plaintiff's half of the wall had two apertures which, if it had been a wall formerly owned by the parties as tenants in common, would have been entitled to the use of the defendants' part of the wall to cover these apertures, but had the wall been owned in severalty the plaintiff would have no right of action for the withdrawal of support (*Wiltshire* v. *Sidford* (1827) 8 B. & C. 259).

In my opinion there is no legal right in the nature of an easement to protection from the weather.

The Definition of Existing Contravening Development

By Harold J. J. Brown, Barrister-at-Law

The decision of the Court of Appeal in the *Bekonscot Case* (*Buckingham County Council* v. *Callingham* (1952) 2 P. & C.R. 400,[1] affirming the decision of the Divisional Court (1951) 2 P. & C.R. 173 [2]) has established that where development took place before April 1, 1933 (the date of the interim development order under the Act of 1932), the development is "existing contravening development" within para. (*a*) of s. 75 (9) of the Act of 1947 if the land was subject to a resolution to prepare a planning scheme under the earlier legislation and interim development permission was not obtained.

A contrary view had previously been widely held, for as the Minister of Local Government and Planning had pointed out,[3] the expression "interim development order" which occurs in para. (*a*) is defined by s. 119 (1) as meaning an order made under s. 10 (1) of the Act of 1932. The Minister concluded from this that breaches of interim development control which occurred prior to the coming into force of that Act (on April 1, 1933) were not subject to enforcement action under the Act of 1947. This conclusion was thought not to be impaired by the fact that in *Higham* v. *Havant and Waterloo U. D. C.* (1951) 1 P. & C.R. 281, and 2 P. & C.R. 115,[4] the court held that a use of land begun in 1931 without permission under the Portsmouth and District Town Planning (General Interim Development) Order, 1928, since apparently the attention of the court had not been directed in that case to the definition of "interim development order" in s. 119.

In the *Bekonscot Case* both the Divisional Court and the Court of Appeal accepted the contention that "interim development order" in para. (*a*) of s. 75 (9) must refer to an

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[1] Noted [1951] J.P.L. 661.
[2] Noted *ante*, p. 285.
[3] In a letter dated May 31, 1951, to the Managing Editor, *The Journal of Planning Law*. The letter is printed in 2 P. & C.R. 115, and was commented upon at [1951] J.P.L. 402.
[4] [1951] J.P.L. 58, 416.

order under the Act of 1932, and not to an interim development order under earlier legislation; but nevertheless development carried out before April 1, 1933, was held to be caught by s. 75 if at the time of the development the land was subject to a resolution to prepare a scheme, even under pre-1932 Act legislation. The court reached this conclusion by giving an absolutely literal interpretation to para. (*a*) of s. 75 (9), which reads that if works were carried out at a time when the land was subject to a resolution to prepare a planning scheme they shall be deemed to have been carried out in contravention of previous planning control if carried out " otherwise than in accordance with permission granted in that behalf by or under the interim development order " (made under the Act of 1932). In this case a resolution to prepare a planning scheme became effective in September, 1929, and works carried out after that date were accordingly liable to enforcement action under s. 75 because carried out " otherwise than in accordance with " permission under an interim development order made under the Act of 1932. In fact, said the court, these works were not carried out in accordance with permission under the 1932 Act interim development order, which had not then been made, and so they became subject to enforcement action under s. 75 of the Act of 1947.

If this literal interpretation is followed it leads to the conclusion that even where works were carried out before 1933 *with* interim development permission under the earlier Acts, they became subject to s. 75 of the Act of 1947, since they cannot be said to have been carried out with permission under the 1932 Act order. The possibility of this conclusion was referred to by Morris L.J. who said:

> " If in some case permission had in fact been given under the Order of 1922, then, in the unlikely event of a suggestion being made that the words of s. 75 (9) would nevertheless apply, the effect of s. 54 of the Act of 1932 and of s. 113 of the Act of 1947 dealing with repeals and of certain other provisions would have to be considered. It may be that a permission given under the Order of 1922 would be treated as a permission given under the Order of 1933. But this matter does not call for decision and I express no opinion upon it."

It would indeed be surprising—and it may be thought absurd—if development for which interim development permission had been granted before 1933 were to be deemed to be " existing contravening development " within s. 75 of the

Act of 1947. But consideration of such a possibility only arises because of the strictly literal interpretation placed upon para. (*a*) of s. 75 (9). Since this surprising conclusion follows from such an interpretation, it might have been expected that the court would have been inclined to reject the interpretation, especially since an alternative meaning of the provisions which appears to be logical and reasonable, is possible—*viz.*, that development is within para. (*a*) of s. 75 (9) only if carried out after the 1932 Act interim development order came into operation and without permission thereunder.

The court have, however, based their decision squarely on the strictly literal interpretation of the paragraph. It is unlikely that any authority would seek to challenge any development for which interim development permission was granted before 1933, and the three-year limit in s. 75 having now expired, that question will probably not fall to be considered again—although such points may arise in other than enforcement proceedings, as in *Higham's Case*. Development carried out without interim development permission after the date of a resolution to prepare a scheme is, under this decision, existing contravening development under s. 75 of the 1947 Act whether the resolution was passed under the 1932 Act or one of the earlier Acts.

Development in Barsetshire

Claim for Loss of Advertising Rights

The following conversation may be assumed to have taken place between S., a surveyor, and D.V., the district valuer, during a discussion on claims for loss of development value:—

D.V. Having disposed of these cases we now turn to your s. 58 claim on this small plot of land at the rear of Smith Street—together with the block of garages thereon. My preliminary statement of no claim on form C.V. 121 was based on the view that the number of garages existing was ample for the probable local demand, but on reflection I am prepared to agree a further block might be let successfully if planning permission were granted.

S. That is extremely kind of you. Do I take it, then, that you agree my original figures?

D.V. By no means. I cannot see more than a small part of your proposed development value by any normal process of valuation. My figures give a claim of £200 only and I shall be interested to see by what ingenious ideas you seek to upset me in this straightforward case.

S. Leaving aside the exact amount in respect of the extra garages, which I am inclined to accept, I must point out that you have ignored my client's undoubted pre-1947 right to erect an advertisement hoarding on the long frontage at the rear. The existing yearly tenancy of the land is subject to my client's right to do so.

D.V. Of course I have and I do not think you can be serious in advancing such a claim. S. 61 (3) clearly states that no account shall be taken of advertising rights in the valuation for this purpose. With respect, may I say that I have never before known you to "forget" a clause in the Act so innocently.

S. On the contrary—neither forgotten nor mis-read! Will you please read it again. The subsection specifically refers to taking no account of any power to require the discontinuance of that use when land *is* used on the appointed day. In this case there was not any advertisement at that

date but the Act has taken away my client's right to erect one or made him liable to pay development charge if he does so.

D.V. The wording is as you say but it is an obvious anomaly. If you cannot claim for an advertisement in being on the appointed day it would be ridiculous to allow you to do so for a mere possibility !

S. How many times have you said to me—" I appreciate your arguments but I must stick strictly to the wording of the Act " ?

D.V. (*somewhat ruefully*). I do seem to have heard those words before. Your contention is a startling one, but I must admit I cannot see the answer at once and I must ask you to leave the case over while I consult my senior.

D.V. (*some days later*). I have discussed this case with my senior and studied all our official " dope " and I must admit the answer cannot be found. The position is anomalous, but I am prepared to settle for £400 claim.

Progress of Development Plans

(*Continued from p. 339, ante*)

Plans Submitted to the Minister

The following is a continuation of the list of plans submitted to date (June 20, 1952). Any objections should be sent to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before the closing date indicated.

71. Worcestershire County Council.
Submitted to Minister: April 16, 1952.
(*London Gazette*, May 27, 1952.)
Closing date for objections: July 14, 1952.[1]

90. Leicester County Borough Council.
Submitted to Minister: May 13, 1952.
(*London Gazette*, May 16, 1952.)
Closing date for objections: July 12, 1952.

91. Bath County Borough Council.
Submitted to Minister, May 29, 1952.
(*London Gazette*, June 3, 1952.)
Closing date for objections: July 28, 1952.

Plans Approved by the Minister

The development plans of the following local authorities have now been approved by the Minister and have become operative as from the dates indicated. Any application to the High Court to question the validity of a plan or any provision therein must be made within six weeks from the date when notice of approval of the plan was first published.

5. Darlington County Borough Council.
Approved: May 30, 1952.
Operative: June 12, 1952.
(*London Gazette*, June 13, 1952.)

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[1] Amended date.

22. Gateshead County Borough Council.
Approved: April 30, 1952.
Operative: May 14, 1952.
(*London Gazette*, May 16, 1952.)

Dates of Local Inquiries

53. Birkenhead County Borough Council.
Local inquiry: July 23, 1952.

55. Rutland County Council.
Local inquiry: June 25, 1952.

61. Smethwick County Borough Council.
Local inquiry: June 25, 1952.

66. Hastings County Borough Council.
Local inquiry: October 15, 1952.

72. Lincolnshire (Parts of Lindsey) County Council.
Local inquiry: October 7, 1952.

75. Doncaster County Borough Council.
Local inquiry: September 23, 1952.

Scotland

(*Continued from* [1952] J.P.L. 151)

S. 8. Ayr Town Council.
Submitted to Secretary of State: May 14, 1952.
(*Edinburgh Gazette*, May 20, 1952.)
Closing date for objections: June 30, 1952.

S. 9. Port Glasgow Town Council.
Submitted to Secretary of State: May 17, 1952.
(*Edinburgh Gazette*, May 20, 27, 1952.)
Closing date for objections: July 5, 1952.

Statutory Instruments

The Ironstone Restoration Fund (Contributions) (Rate of Interest) Order, 1952

(S.I. 1952, No. 581)

Made - - - - - *March* 17, 1952
Coming into Operation - *April* 1, 1952

[*Summarised*]

Under s. 4 (3) of the Mineral Workings Act, 1951, any sum by which the payment, made by an operator in respect of any financial year in accordance with subs. (1) of that section, falls short of or exceeds the amount of the contributions actually due from him in respect of that year shall be recoverable by or from the Minister, as the case may be, on demand with interest at such rate as may from time to time be determined by the Treasury. By this Order the Treasury determine a rate of three per cent. per annum.

Parliamentary Intelligence

Agricultural Land (Removal of Surface Soil) Bill

This Private Member's Bill received its first reading in the House of Commons on May 7, 1952.

The purpose of the Bill is to make it an offence to carry out any development consisting of the removal of surface soil from agricultural land, unless planning permission is granted.

New Towns Bill

This Bill, which proposes to increase the aggregate amount of advances which may be made to New Towns development corporations from £50 million to £100 million, was read the third time in the House of Lords on May 28, 1952, and now awaits the Royal Assent.

Development Charges—Set-off

A reply in the House of Commons to a question relating to the future collection of development charges from persons who possess agreed claims on the global sum is set out in the Central Land Board's Circular C.L.B./44, printed at p. 408, *post*, which also contains further particulars of the set-off arrangements to be allowed pending the distribution of the £300 million fund.

Caravan Sites

A short debate on caravan sites, with special reference to the position in Middlesex, took place in the House of Commons on May 22, 1952.

Mr. Beswick referred to the exorbitant charges made by the owners of some caravan sites, and said that a number of sites should be provided by, or under licence from, the local authority.

The Parliamentary Secretary to the Ministry of Housing and Local Government (*Mr. Marples*) recognised that there was a grave problem and said that the Ministry would assist any local authority to develop caravan sites, although it was necessary for the initiative to come from the local authority, and they must be careful not to encourage sub-standard housing.

Debate on Act of 1947

A debate on the working of the Town and Country Planning Act, 1947, took place in the House of Lords on May 27, 1952.

Lord Llewellyn, who initiated the debate, said that s. 58 payments should be at 100 per cent. of development value if they were made at all. He thought that the redevelopment of a developed site and the extension of buildings should not be liable to development charge, as otherwise improvements were penalised. Appeal from refusal of planning permission should be to an independent tribunal.

Several other speakers were critical of the operation of development charge, or suggested particular improvements such as the speeding up of planning appeals.

Lord Woolton said that the Government were considering the question of amending the Act, but would not make alterations for their own sake.

Central Land Board Practice

Builders' Near Ripe Land—Effect on Part VI Claim of Sale of Land or Assignment of Claim

The following correspondence between Messrs. Spencer, Gibson & Son, Solicitors, of Sutton, Surrey, and the Regional Manager, Central Land Board, 246 Stockwell Road, S.W.9, is further to that included at p. 343, *ante*.

Letter to Central Land Board, dated May 3, 1952: "We are much obliged to you for your letter of April 30. We take it the last paragraph of the letter means that not only it must not be sold, but it may not be charged or mortgaged."

Reply from Central Land Board, dated May 30, 1952: "I refer to your letter dated May 3, 1952, and would inform you that where near ripe treatment is granted to a builder it is essential, if near ripe treatment is to continue, that the right to receive the Part VI payment remains with the builder who has been granted the near ripe ration. If the right to receive the Part VI payment is assigned, charged or in any way encumbered the land so effected would no longer attract builders' near ripe treatment. Therefore, in order to ensure that the builders' position under the near ripe scheme is not prejudiced you should see that the right to receive the Part VI payment is retained in the hands of your client.

"This does not mean of course that the land which has been granted builders' near ripe treatment cannot be sold without the benefit of the near ripe scheme being lost. But if a sale took place before payments from the £300 million are made, one of the three methods of sale described in the Board's pamphlet House 1, a copy of which was enclosed with my letter of April 30, 1952, should be followed."

Development Charges and Claims: Central Land Board's Procedure

C.L.B./44 dated June 11, 1952

The following appeared in Hansard (col. *118*) for May 26, 1952 :—

"*Mr. Walker-Smith* asked the Chancellor of the Exchequer whether, in the light of the progress made on the assessment of

claims on the sum of £300 million set aside under the Town and Country Planning Act, 1947, he will make a statement about the future collection of development charges from persons who possess agreed claims.

" *Mr. Boyd-Carpenter.* Yes. In future when a development charge becomes due from a developer who possesses a claim the value of which has been determined, the Central Land Board will accept a charge upon that claim as security for an amount not exceeding 80 per cent. of the face value of the claim. Only the balance (if any) of the development charge will be immediately payable."

When issuing an assessment of development charge to an applicant who, according to their records, has an agreed claim on the £300 million in respect of the same land, the Central Land Board will offer to accept a charge upon the claim as indicated above. If it is not immediately clear from their records that the applicant has a claim, the Board will ask whether he has one. The claim need not necessarily relate to the land which it is proposed to develop.

An applicant who is paying a development charge by instalments can offer a claim as security for the outstanding capital up to 80 per cent. of the face value of the claim.

These arrangements apply to a development charge for winning and working " dormant " minerals (that is, minerals which are not " near-ripe ") provided the charge takes the form of a single capital payment.

In no circumstances can the Board repay, under these arrangements, a development charge which has already been paid either in part or in full.

Notes of Cases [1]

Court of Appeal

Compensation for Compulsory Purchase—Rule (5)

Aston Charities Trust, Ltd. v. Stepney Corporation [2] (June 11, 1952). This was an appeal from the decision of the Lands Tribunal (noted *ante*, p. 110) that compensation for the compulsory purchase of premises known as Durning Hall, Stepney, should be assessed on the basis of r. (5) in s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919. The claimants were a religious and charitable trust. The premises had been a Unitarian Church and Institute which had been war-damaged, and the greater part of which had been leased, for the duration of the war and thereafter subject to six months' notice, to a firm of organ builders for storing organs. Notice to treat was dated February 26, 1946.

The court (Somervell, Birkett and Hodson L.JJ.) upheld the view of the Lands Tribunal that the premises were devoted " and but for the compulsory acquisition would continue to be devoted " to the purposes of the trust, and so within r. (5). The words " devoted to a purpose " introduce a conception of intention and indicate a different test from that of *de facto* use, and a temporary interruption of use caused by bombing could be disregarded.

On the question whether reinstatement could take place at a distance of four miles, Somervell L.J. said that this was a matter of degree, but he was not satisfied that the Tribunal had misdirected themselves or misconstrued the words of the section.

Appeal dismissed.

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[1] Full reports of these cases will be published in *Planning and Compensation Reports*.

[2] Counsel: *G. R. Mitchison, Q.C.*, and *B. Stuart Horner*, instructed by the Town Clerk of Stepney, for the appellants; *Geoffrey Lawrence, Q.C.*, and *J. P. Comyn*, instructed by Cummings, Marchant and Ashton, for the respondents.

Lands Tribunal Decisions[1]

Compensation for Compulsory Purchase

Rimmer v. Southport Corporation (Ref. 62/1951, May 12, 1952). This was a claim for compensation for the compulsory purchase of the leasehold interest in about 0.145 acre of land forming part of the back gardens of two houses at Southport. The interest of the claimant was an unexpired term of 24 years as from March 29, 1950, the date of the notice to treat. He claimed compensation of £300. The District Valuer valued the interest at £16, based on the rental value of the land less the apportioned share of ground rent, plus £14 injurious affection.

The Tribunal (J. P. C. Done, Esq., F.R.I.C.S.) accepted the District Valuer's figure of £16 for the land, but having regard to the lessee's liability under the repairs covenant in the lease which liability would be increased because the garden land remaining was insufficient for chicken runs, etc., the Tribunal assessed the injurious affection at £30, the total compensation being, therefore, £46.

John I. Fearn (Agricultural), Ltd. v. British Electricity Authority[2] (Ref. 51/1951, May 13, 1952). This was a claim for compensation in respect of the compulsory purchase of 2.17 acres of land adjoining the Great North Road on the outskirts of Doncaster, on which were certain buildings used as workshops and stores formerly used by the claimants, a firm of agricultural machinery agents and merchants.

Notice to treat was dated June 5, 1950.

A detailed valuation amounting to £5,875 was submitted for the claimants, supported by an analysis of rents of other lands near Doncaster used for comparable purposes, and particulars of other properties for which the claimants had applied for tenancies. The District Valuer valued the property at £1,705.

The Tribunal (J. P. C. Done, Esq., F.R.I.C.S.) did not accept the District Valuer's figures, which were based on the price

[1] Full reports of these decisions will be published in *Planning and Compensation Reports*.

[2] Counsel: *J. Ramsay Willis*, instructed by Wake, Smith & Co., Sheffield; *Brian H. Bliss* of the Legal Department, British Electricity Authority.

for which the property had been purchased in May, 1947, less a deduction for development value, since by that date market values were depreciated by the prospects of future legislation. Having regard to the values of comparable properties of which particulars were submitted by the claimants, the Tribunal accepted a capital value of £1,800 based on £800 per acre, and added to this the market value of the buildings, estimated at £1,400, to total £3,200. This was reduced to £3,150 in view of the notional lease provisions of s. 52. Additions of £950 in respect of disturbance and £450 for removal expenses were allowed, the total compensation thus amounting to £4,550.

Wright's Executors v. Smallburgh Rural District Council [3] (Ref. 81/1951, May 23, 1952). This was a claim for compensation for the compulsory purchase of four acres of high quality agricultural land at Stalham, Norfolk. Notice to treat was dated December 30, 1949. The claimants claimed £400 plus £50 for disturbance and injurious affection. The district valuer valued the land at £300.

The Tribunal (JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.), adopted the claimant's valuer's figure of £100 per acre, but held that that was sufficient to include for any disturbance and injurious affection, and accordingly awarded compensation of £400.

Reason v. Wanstead and Woodford Corporation (Ref. 2/1952, May 20, 29, 1952). This was a reference for the determination of compensation for the compulsory purchase of the site of a semi-detached dwelling-house which had been destroyed by enemy action. At the date of notice to treat, October 30, 1951, the site was in a suitable condition for immediate rebuilding, and it carried with it the right to build without liability to development charge, to the limits prescribed by Sched. III to the Act of 1947.

The Tribunal (CECIL H. BAILEY, ESQ., B.SC., M.I.C.E., F.R.I.C.S.) accepted a valuation submitted by the district valuer based on a present capital value of the site of £150 (20 ft. frontage at £7 10s. 0d. per ft.), with an allowance in respect of the notional lease provisions of s. 52. The compensation payable was determined to be £140.

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[3] Appearances: *Montague P. Solomon*, instructed by Hansell, Hales, Bridgwater & Preston, of Norwich; Mr. F. R. Bell, Solicitor to the Smallburgh R.D.C.

Claims for Loss of Development Value

Bellamy v. Central Land Board (Ref. CLB/751/1951, May 9, 1952). This was an appeal against a determination by the Central Land Board that there was no development value in 4.037 acres of land at Wilmcote, Warwickshire.

The appellant claimed that the development value of the land, which had been purchased for £340 for housing purposes in 1948, was £460 (unrestricted value, £800; restricted value £340). The Central Land Board placed both unrestricted and restricted values at £340.

The Tribunal (JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.), held that although the market for the land for the purpose of erecting houses would at the material date have been a very poor one, the local authority might possibly have been willing to purchase the land. The price they would have been willing to pay, in the probable absence of serious competition, was estimated to be £485, based on £120 per acre. The unrestricted value was therefore £485, and the development value should be determined at £145.

Appeal allowed, with costs at an amount to be agreed, or failing agreement to be taxed on County Court Scale I.

North of England Pure Oil and Cake Co., Ltd. v. Central Land Board (Ref. CLB/450/1951, May 13, 1952). This was an appeal against a determination by the Central Land Board that the development value of six acres of building land at Pontefract, Yorkshire, was £720 (unrestricted value £1,200, restricted value £480).

The appellants claimed that the development value was £2,520 (unrestricted value £3,000, restricted value £480).

The Tribunal (J. P. C. DONE, ESQ., F.R.I.C.S.) had regard to certain transactions involving other parts of the appellants' lands, and also to several settlements of development value in comparable cases, referred to by the Board. Making allowance for the varying character of the examples cited, the Tribunal determined that the unrestricted value should be £2,250, and the development value therefore £1,770.

Appeal allowed, with costs of 30 guineas.

Edwards v. Central Land Board (Ref. CLB/657/1951, May 16, 1952). This was an appeal against a determination by the Central Land Board that there is no development value in six acres of pasture-land at Woonton, Herefordshire, part of the appellant's farm.

The appellant claimed that the development value was £240 (unrestricted value £600, restricted value £360). The Central Land Board contended that both unrestricted and restricted values were £360.

The Tribunal (JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.) did not accept the appellant's contention that the land, which was a strip adjoining the main road, had a higher value for building four or six houses than it had as farm land. It was necessary to have regard to the amount of other frontage land available, and to difficulties regarding obtaining building licences and as to water and electricity supply. The determination of the Central Land Board was accordingly upheld.

Appeal dismissed with five guineas costs.

Compensation on Revocation of Planning Permission

Evans v. Cheshire County Council [4] (Ref. 45/1951, May 13, 1952). This was a claim for compensation for expenditure incurred in respect of land at Church Lawton, Cheshire, and rendered abortive by a revocation of planning permission.

In 1947 the claimant had proposed to establish a foundry on the land, and relying on an assurance by the Congleton R. D. C., then the planning authority, that the project would probably be approved, he instructed a firm of architects to prepare plans for by-law and planning applications. He also paid £250 to the owner of the land as a deposit on the purchase price of £600, the sale being "subject to contract." A letter of April 1, 1948, from the rural district council said that it was considered that the proposal could proceed and a recommendation to that effect would be made to the next meeting of the council. The claimant commenced the levelling of the site and repair of fencing in May, 1948. Interim development permission was granted on June 11, 1948.

On November 16, 1948, a building licence for £2,000 was issued. The planning permission was revoked by an order made by the Cheshire County Council early in December, and confirmed by the Minister in April, 1949.

The claimant claimed £10,750 in respect of loss of profits, and £730 4s. 0d. for abortive expenditure, totalling £11,480 4s. The planning authority's figures totalled £209.

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[4] Counsel: *Paul Layton*, instructed by P. J. McKnight & Ryder, Henley, for the claimant; *G. D. Squibb*, instructed by the Clerk of the Cheshire County Council, for the planning authority.

The Tribunal (J. P. C. Done, Esq., F.R.I.C.S.) rejected the claim for loss of profits, since the business had not been established and the principle in *Halford* v. *Oxfordshire County Council* (1952) 2 P. & C.R. 358 (noted *ante*, p. 158) applied. It was necessary to examine the items comprising the claim to abortive expenditure in the light of s. 22 of the Act of 1947, which allowed for three classes of compensation. Expenditure on levelling the site could only be included if incurred after the date when planning permission was received, and £150 was awarded (claim, £250). A claim in respect of tenant right (£8) was disallowed as the claimant would be entitled to outgoing tenant right. The cost of necessary plans, £17, was agreed. The full cost of fencing materials was allowable, but only the cost of labour attributable to the period after receipt of planning permission, £150 (claim £208, local authority £13). An amount of £10 paid for an option to defer completion of the purchase of the land after notification of the revocation order and pending the appeal against it, was allowed, as also was an amount of £5 for rent paid. Personal attendance at the site by the claimant in his spare time to supervise the work was valued at £70 (claim £100, local authority £20), and an amount of £21 was allowed for solicitors' charges relative to admissible matters (claim £132 4s. 0d.; local authority, £9).

The Tribunal accordingly awarded compensation of the total of the above sums, *viz.*, £423, the claimant's costs to be paid by the respondent authority, on the High Court scale.

Southern Olympia (Syndicate), Ltd. v. West Sussex County Council [5] (Ref. 20/1951, May 29, 1952). This was a determination of a preliminary point of law arising on a claim under s. 7 of the Town and Country Planning (Interim Development) Act, 1943, for compensation on the revocation in June, 1947, of certain interim development permissions granted in 1937 and 1938. The permissions had been in respect of the development of 22 acres of land at Lancing, Sussex, for exhibition purposes, and the parties had agreed a statement of the relevant facts. The question for the decision of the Tribunal was whether compensation was payable in respect of matters set out under ten headings in the notice of reference

[5] Counsel: *Harold Williams Q.C.*, and *Christopher Hodson*, instructed by F. W. A. Cushman & Sons, Hove, for the claimants; *Arthur Capewell, Q.C.*, and *W. J. Glover*, instructed by the Clerk of the West Sussex County Council.

to the Tribunal, having regard to the wording of subss. (2) and (3) of s. 7 of the Act of 1943.

The Tribunal (ERSKINE SIMES, ESQ., Q.C.) held that in order to be " expenditure incurred in carrying out any work " within s. 7 (2), the amount claimed must have been actually paid, and paid in respect of the carrying out of physical work on the site after the date of the interim development permission, and the expression did not include liabilities incurred. The only item of claim which could fall under this head was " expenditure in the development of the site " which related to hard core placed on the land, and the claimant was entitled to compensation for this, subject to proof that the amount had in fact been paid (before June 24, 1948, the last date when a claim could be made under the Act) and that the work was rendered abortive by the order. The item " Architect's fees " could also be allowed under s. 7 (3) if the money had been paid and paid for the preparation of plans or works rendered abortive by the revocation order. The words " other similar matters preparatory thereto " in the subsection were limited to matters *ejusdem generis* with plans and could not include the costs of raising capital.

None of the other items could be said to be a sum paid in discharge of a liability arising under a contract in respect of the abandonment of the work, and accordingly no compensation was payable under the second head of s. 7 (2) in respect of the claims for " Preliminary expenses in the formation of a company," " Procuration fees," " Expenses in relation to Bills accepted," " Liability under service agreement with Mr. Slade, as Managing Director," and " Interest on loans."

The only other items were " Rent under lease " and " Legal expenses on grant of lease," which also did not fall under either head.

On a further contention for the compensation authority that no compensation was payable because consent for the development had not been obtained under the Restriction of Ribbon Development Act, 1935, the Tribunal held that this did not preclude the recovery of compensation in this case since the county council as highway authority were aware of the proposals, and there was no evidence that they had regarded the proposals unfavourably.

The Tribunal accordingly determined that the claimant could be entitled to compensation only in respect of expenditure in development of the site and architect's fees, and subject to proof in each case.

Notes of Planning Decisions *

Week-end Shack—Permitted Tolerances of Dwelling-house

The following is an extract from the letter of the Minister of Housing and Local Government dated May 7, 1952, following an appeal against the refusal of the Billericay Urban District Council, to permit the retention of a chemical closet and tool shed on land at Vange, Essex.

"The building under appeal is a tool shed 5½ feet square and a closet 5½ feet x 3½ feet. It has been erected some five yards behind "Crowlands," which is a shack 24 feet long x 10 feet wide, having one room for a bedroom, the centre portion as a sitting-dining room and the third portion partitioned to make a small bedroom and a kitchen-pantry. It is used at week-ends by the appellant and has been so used by previous owners for many years. It has a rateable value of £2 per annum.

"It was contended on behalf of the Council that 'Crowlands' had never been recognised as a dwelling-house and that therefore the appellant was not entitled to the benefit of the permission given in Class I (2) of Sched. I to the Town and Country Planning General Development Order, 1950. The Minister is advised, however, that the question whether a particular building is a dwelling-house within the meaning of the Town and Country Planning Act, 1947, and this Order is a question of fact to be decided on a consideration of all the circumstances. On the facts before him the Minister is of opinion that 'Crowlands' is a dwelling-house for the purpose of these provisions and that the building under appeal is within its curtilage. In these circumstances the erection of the building under appeal was permitted development within Class 1 (2). There is no suggestion that the conditions attached under the General Development Order in relation to developments of that class were not complied with, and the Minister therefore proposes to take no further action on the present application."

[By courtesy of the Clerk of the Billericay Urban District Council.]

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* The Managing Editor desires to express his thanks to those who have been kind enough to send to this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

Erection of Week-end Bungalow

The Minister of Housing and Local Government has dismissed an appeal against the refusal of Strood Rural District Council to permit the erection of a bungalow on land at Culverstone Estate, Meopham. The building would have been a timber-framed asbestos one for use at week-ends and holidays.

The Council has set aside 125 acres of land in this area within which planning permission is normally given for chalet and caravan development of a reasonable standard. Permission in this case was refused because the site was outside the area set aside by the Council for such development, it was difficult of access in bad weather and no services were available. It was also felt that to consent would embarrass the Council in their efforts to control similar development which has already taken place in this vicinity.

The Minister, while sympathising with the appellant, agrees with the Council that the erection of more sub-standard buildings outside the area set aside for this purpose would detract still more from the natural beauty of this stretch of country which has already been spoiled to some extent during the last fifteen years.

[By the courtesy of the Public Relations Officer, Kent County Council.]

Joiner's Workshop and Office on Back Land in Residential Area

The following is an extract from the letter of the Minister of Housing and Local Government dated May 26, 1952, following an appeal against the limitation to five years of planning permission granted by Hampshire County Council for the erection of a joiners' workshop and office on land at Elm Close, Hayling Island.

"The site of the proposed building is a piece of back land, slightly more than half an acre, behind shops facing to Elm Grove, one of the major roads in South Hayling, and abutting at the rear the gardens of houses in the Elm Close Estate. There is a pedestrian access to Elm Grove but vehicular access is by a rough track alongside private gardens into the approach road to Elm Close Estate.

Apart from the shops, which have flats above, and the private houses there is a chapel, a chapel hall, a cadets' hut and a small printing works nearby.

"In granting permission the Council imposed conditions that no machinery should be installed other than what is ancillary to the proposed use and that working should be

restricted to the hours between 8 a.m. and 6 p.m. on weekdays only. The permission was, however, limited in time to five years and your case is that the time limitation is unreasonable since the building which you wish to erect is of a permanent nature.

"The Minister has carefully considered the representations made and having regard to the close proximity of houses and flats has considered whether he should exercise his power under s. 16 (2) to review the decision as a whole and if necessary to refuse permission for the development. He has come to the conclusion that he would not be justified in refusing permission in this instance, but he is satisfied that permanent permission ought not to be given. While he recognises that you may not wish to erect such a substantial building on the strength of permission for five years only, it is of course open to you to submit plans for the erection of a building of more temporary character."

[By courtesy of the Clerk of the Havant and Waterloo Area Development Sub-Committee.]

Change of Use from Builder's Yard to Light Industry [1]

The following is an extract from the letter of the Minister of Housing and Local Government dated May 22, 1952, following appeals against the determination of the Friern Barnet Urban District Council that the use of premises at Bellevue Road, London N.11, for silk screen printing would constitute or involve development within the meaning of the Act, and that an application for planning permission is required under the Act; and against the time limit to December 31, 1954, imposed by the Council in granting permission for the use of the premises for silk screen printing.

"The appellants claim that the use of the premises at the appointed day was an industrial use as a builder's yard and workshop falling within Class IV of the Schedule to the Town and Country Planning (Use Classes) Order, 1950, and that permission for the institution of the light industrial use under appeal would not therefore be required.

"In support of this contention they refer to decision No. 12 in the bulletin of Selected Appeal Decisions No. II issued by the Minister of Town and Country Planning in December, 1947, in which a builder's yard is described as an "industrial undertaking." That appeal was made, however, under a planning

[1] See also decisions reported at pp. 359, 360, *ante*.

scheme in force under earlier legislation and the Minister's remarks had no relevance therefore to the question now under consideration, namely, whether use as a builder's yard is a use falling within Class IV of the Schedule to the Town and Country Planning (Use Classes) Order, 1950.

"The Minister considers that use as a builder's yard does not fall within any Use Class in the Order and he has determined that the proposed change of use will be a material change of use for which permission under the Act is required. Accordingly the Minister has decided to dismiss the appeal made to him under s. 17 of the Act.

"It appears that the appellants' use of the building will be inoffensive and that the industry, in which no machinery is is used, is quiet and clean. In the circumstances it does not seem essential to impose a time limit on the development provided the use is restricted to that under appeal.

"The Minister has therefore decided to exercise the powers conferred in s. 16 (2) of the Act and to discharge the three conditions imposed by your Council when granting permission for the use in question, and he hereby grants permission accordingly as applied for, subject to the condition that the premises shall not be used for any other purpose, including any other purpose within Classes III or IV of the Schedule to the Town and Country Planning (Use Classes) Order, 1950."

[By courtesy of the Clerk of the Friern Barnet Urban District Council.]

Temporary Use on Appointed Day following Requisitioning

The following is an extract from the letter of the Minister of Housing and Local Government dated April 30, 1952, following an appeal against the determination of the Wiltshire County Council that the use of the Avon Mill, Limpley Stoke, near Bath, for the purposes of a fencing factory would constitute development within the meaning of the Act and that an application for planning permission would be required in respect thereof.

"The mill was built about a hundred years ago as a cloth mill and seems to have been used continuously for industry until it was largely destroyed by fire in 1939. The last use conducted by the then owners, Messrs. Holbrow Bros., was as a sawmill and timber yard, from 1934–1939. Reconstruction was not completed until about the end of 1943, and in February, 1944, the rebuilt portion was requisitioned by the

Ministry of Works for Messrs. Peradin, Ltd., a rubber company, and used as a store. Meanwhile, Messrs. Holbrow Bros. concentrated their timber business mainly in other premises at Bradford-on-Avon. The requisition was terminated on September 28, 1946, but the mill was subsequently let by Messrs. Holbrow Bros. on a five-year lease to Messrs. Peradin, Ltd., who continued to use it as a store until early in 1950, when they gave up possession. The mill was then sold to Mr. Boulton and since that time it has not been used.

"The Minister is satisfied from the information submitted that the present building was erected before it was requisitioned by the Ministry of Works and without a view to the requisitioning, and that the normal use of the buildings and the land surrounding it at the date of the requisition was industrial, although apparently the rebuilt building had not actually been used for industry. The use for storage under the requisition was clearly a temporary use, and the Minister is of opinion that it did not cease to be a temporary use because of the lease to Messrs. Peradin, Ltd., which immediately followed the requisitioning. He regards the lease as a natural prolongation of the temporary use for a fixed period, implying no intention to make storage the permanent use and the fact that Messrs. Holbrow Bros. decided to sell the premises rather than to use them again themselves is not, in his view, evidence that they intended to change the use. The Minister has come to the conclusion, therefore, that the normal use both of the building and of the surrounding land, which includes the turbines, is the use as a sawmill and timber yard and that, by virtue of s. 12 (5) (*a*) of the Town and Country Planning Act, 1947, planning permission would not be required for the resumption of that use. He regards that use as falling within Class IV of the Schedule to the Town and Country Planning (Use Classes) Order, 1950, and from the evidence available, he considers that the fencing factory would fall within the same Use Class. He accordingly determines that the use proposed does not involve development for which planning permission is required."

[By courtesy of Messrs. Moger & Co., Solicitors, and Messrs. Snailum & Mugford, Auctioneers, Valuers, Surveyors and Estate Agents.]

Book Reviews

Land Planning Law in a Free Society. By Charles M. Haar. Harvard University Press (London: Geoffrey Cumberlege). 25s. 171 and 38 (notes) and 16 (diagrams) and x pp.

An American here examines the English Town and Country Planning Act, 1947. Mr. Haar, a practising New York lawyer and a lecturer of New York University, visited England in 1948 and carried out an intensive study, not only of the statutory provisions and the day to day working of the planning authorities (for which he gained the co-operation of authorities such as the London County Council and the Ministry of Town and Country Planning) but also of the background and historical origins of the legislation and its social and political setting and all the problems of land use and misuse which are its *raison d'être.*

This book, the results of his studies, is an illuminating account of the control of land use as it has developed and as it exists in England today. It is clear that the book is meant primarily for the American reader, who, it seems, is increasingly faced with social problems similar to those which have resulted in the growth of planning in this country. The experience of more than 40 years of planning legislation should be at least a useful source of reference to the citizens of the United States when considering how to tackle problems of land use in their own country, and Mr. Haar has rendered valuable service to his countrymen by providing them with a study of the British system—a study which is detailed yet affords a conspectus of the subject as a whole, and does not forget its relationship to the rest of the social system. The notes in the Appendix cite many interesting references in support of statements in the text.

To the Englishman, the book provides a stimulating commentary on the Act of 1947. It is indeed refreshing to see our institutions as others see them when the guide is as perceptive and constructive in approach as is Mr. Haar.

HAROLD J. J. BROWN.

British Housing and Planning Year Book, 1952. The National Housing and Town Planning Council. 6s. 6d. 54 pp. and 36 pp. (adverts.).

This is mainly a book of reference, giving detailed housing statistics and information as to the National Housing and Town Planning Council. It also includes articles by D. J. E. Lamb, Desmond Heap and B. J. Collins.

Caravan Sites. The National Caravan Council. 10 pp. Gratis.

This little "Guide for Local Authorities and Operators" is an expansion and revision of recommendations of the National Caravan Council, and is an attempt to establish a set of standards in relation to caravan sites which will be generally accepted by local authorities and others who provide such sites. The need for such standards will be generally acknowledged, and anyone responsible for establishing a caravan site will find this a very useful guide to what is desirable.

Practical Points

All questions for consideration should be addressed to "The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of the replies.

374. *Builders' near ripe land*

We should be greatly obliged if you would advise us if we are right in believing that the builders' near ripe treatment is not such an advantageous scheme as it might at first appear to have been? In fact, in the particular case we have in mind, if the Central Land Board finally pays out on the ordinary claims anything over 75 per cent., our clients are going to be worse off than if they had claims under the ordinary scheme.

Thus, taking imaginary figures of a near ripe claim agreed at £5,000 on 12 acres, in actual fact in 1953 it would appear that he will receive:—

on the first acre	(100%)	=	£500
on the next 4 acres	(75%)	=	£1,500
on the remaining 7 acres	(50%)	=	£1,750
			£3,750

which is 75 per cent. of his total agreed figure.

In this case the builder is unlikely to do any speculative building before 1953. [P. & E.]

ANSWER

The percentages set out in S.1.A/NR2 are (except the first item of 100 per cent.) qualified by the words "at least." It is most unlikely that claimants under this Circular will get less than general claimants. [W. A. L.]

375. *Claim for loss of development value—liability to income tax*

We act for two property speculators who, some time ago, formed a limited liability company to carry through the

various transactions. Our clients have so far been fortunate in reselling all the properties at a profit and the company has paid tax on the profits in the normal manner. In one instance the company retained the depreciation claim and this claim has now been determined at £4,000. Will the company be obliged to pay tax at the standard rate on this sum or such amount as may be ultimately credited to them under the Treasury Scheme, even though the payment will be made in the form of government stock which may not be of real negotiable value?

The company contemplate selling the benefit of the claim to the purchaser of the land from the company for a cash sum which would naturally be a figure much less than the agreed claim. If the company did this would it only be liable for tax on the cash transfer price or would the authorities still be able to levy tax on the full figure receivable in government stock? [K. F. & P.]

Answer

It is considered that the value of the depreciation claim under Part VI of the Town and Country Planning Act, 1947, should be treated as part of the value of the stock of land held for resale. If the land has been sold but the claim retained, tax should be paid on the basis of crediting the nominal agreed figure of value. (It is possible that time might be allowed for payment of the tax on the profits represented by this amount. A claim for an allowance might be negotiated if the market value of the stock when due was less than its nominal value.) A special arrangement has been agreed between the Inland Revenue and the National Federation of Builders, under which land may be valued at the cost or market price adopted immediately prior to July 1, 1948, until the compensation comes into credit.

If the right to the depreciation claim were sold or assigned for cash (or other consideration) *prior* to the date when due, the company, it is thought, need only credit the cash price (or value of the consideration) receivable, as for any other sales. The purchaser would not be liable to tax on any difference between the cash price he paid and the value of the claim, provided that, looked at from his point of view, this was a capital purchase, *i.e.*, if he is not trading in property (and probably also provided that he is not speculating in such purchases).

Once the stock has been accepted by the trading company in satisfaction of the claim, any *subsequent* depreciation in its value would be a loss on an investment, and therefore on capital, and not on trading, account. [Z.]

376. *Compensation for refusal of planning permission*

Mrs. T., the owner of a shop which was in existence on July 1, 1948, and to which there is a forecourt, applied for planning permission for the enlargement of the shop by the construction of a single-storey extension on the forecourt. Planning permission was refused and Mrs. T. appealed to the Minister under s. 16 of the Act, but the Minister has endorsed the Council's refusal of planning permission.

It would appear that a claim for compensation can be made under s. 20 of the Act within six months, but we shall be glad to know whether such a claim lies, and if so, the principles upon which compensation might be awarded and the procedure for making the claim. [G. C. & Son.]

ANSWER

It would seem that a claim lies here, provided the areas mentioned in para. 3 of Sched. III are not exceeded, and assuming the forecourt is within the curtilage of the shop (see s. 112 (2)). The claim must comply with the Town and Country Planning (General) Regulations, 1948 (S.I. 1948, No. 1380), art. 4. The compensation will be assessed in accordance with Sched. IV to the 1947 Act, but there are no reported decisions of the Lands Tribunal which would be of assistance. [J. F. G.]

377. *Development—resumption of former use of house, for paying guests*

A client of ours purchased a property in December, 1946, and since then this has been used as a private dwelling-house. The vendor, who had purchased the premises four years earlier and also, we understand, a number of preceding owners, had used the property for the purpose of taking in paying guests.

Our client is now considering resuming the taking in of paying guests at the premises, and, therefore, we shall be much obliged if you will inform us whether you consider this will constitute or involve development of the premises, and whether an application for permission for the user of the

premises for the above purpose is required under the Town and Country Planning Act, 1947. [R. W. W. & H.]

ANSWER

I would suggest that the private dwelling-house use can be regarded as a temporary one since presumably there was always the prospect that the former use would be resumed. If this is so s. 12 (5) (*a*) would apply. Failing this, the question is whether permission was necessary to use the premises as a private dwelling-house in 1946. Assuming there was no planning scheme but only interim development control, the change of use may have been development under s. 53 of the 1932 Act. If so, consent should have been obtained, and without such consent the use is a contravening one under s. 75 (9).

On the appointed day the use was, therefore, liable to enforcement action and could not have been regarded as permanent. Therefore s. 12 (5) (*a*) would again enable the former use to be resumed.

If there was a planning scheme in force in the area under which private dwelling-house was the primary use of the property, no consent was necessary for that use to be established and unless the owner had in mind to resume the taking in of paying guests planning permission will now be necessary : also a determination of development charge.

It is assumed that what the questioner has in mind is not just taking in one paying guest (see Circular 67, para. 4 (iii)). [W. A. L.]

378. *Development—use of private residence for professional purpose*

It is common for professional teachers of music to carry on their teaching practices in their own homes, often indicating this by brass plates on their doors with their names and qualifications, and frequently in addition by advertisements in the local press. Very often they teach also in some college of music, at hired studios, or in schools, merely teaching at home for part of the week, but it is by no means uncommon for the entire teaching practice to be carried on there, one room usually being set aside for the purpose. Your opinion is desired whether to carry on a teaching practice in this way in a house primarily used as a private residence, or to *continue* to carry on such a practice which was commenced before the

Appointed Day, is a development within the meaning of the Act, for which the permission of the local authority must be obtained. [C. M. & A.]

ANSWER

This appears to come within para. 4 (iii) of Ministry Circular No. 67 as the use by a professional man ancillary to the main residential use of the house and therefore does not constitute a material change of use. In any case if the use commenced before the appointed day it would be too late for enforcement action to be taken. [R. R. C.]

379. *Development charge—covenant to complete estate road*

We are negotiating a development charge for a single building plot with the district valuer. The plot is on an estate which is partially developed, but the road has not yet reached the plot in question. No block development charge was negotiated, as the estate was under construction on the Appointed Day, but the vendor, who was the estate developer, covenanted with our client, the purchaser, to complete the road.

We maintain that the consent value cannot be based upon the assumption that the road will be completed, as this is a question of personal covenant between the vendor and the purchaser. The district valuer, on the other hand, contends that the consent value must reflect the fact that the road will later be completed without cost to the owner of the land.

Your views as to which basis is correct would be appreciated. [M. & C.]

ANSWER

The consent value must have regard to the covenant to complete the road for what it is worth, that depending on the financial standing of the covenantor. If a purchaser would pay more because of the covenant it is clearly part of the value of the land. [W. A. L.]

Correspondence

To the Managing Editor,

Journal of Planning Law.

Sir,

May I attempt to clarify the basis of the decision in *D'Alessio* v. *Enfield U. D. C.* (1951) 2 P. & C.R. 166, referred to so often in your pages, and particularly its relation to *Perrins* v. *Perrins* (1951) 1 P. & C. R. 457 and *Burgess* v. *Jarvis* (1952) 2 P. & C. R. 377.

In *D'Alessio's Case* the local authority contended that on the expiry of a "deemed compliance" under the Building Restrictions (War-Time Contraventions) Act, 1946, s. 75 of the 1947 Act should apply by virtue of s. 75 (2) (*b*). The appellants thought s. 75 (2) (*a*) still applied, and the Divisional Court upheld this view. Any power of enforcement would therefore arise under s. 76 (2) as if the use had begun after the appointed day on the expiry of the compliance. Before the justices, the appellants were not unwilling to proceed on the merits under the definition of development which now obtains under s. 12, treating the notice as one served under s. 23 alone and the mention therein of s. 75 as surplusage. The local authority, however, insisted that s. 75 applied, and the Divisional Court directed the quashing of the notice under s. 23 (4) (*a*) as modified by s. 75 (5).

It is therefore misleading to say *D'Alessio's Case* decided that a notice could be quashed either (1) "on a ground outside s. 23 (4) (*a*)" or (2) "for a formal defect."

May I respectfully suggest that the remark at [1952] J.P.L. 69 is not justified; and that the proposition successfully contended for in *L. C. C.* v. *Cole* [1952] J.P.L. 231 finds no support in *D'Alessio's Case*?

My own view, which I am happy to think accords in general with the views expressed in the *Journal* by Mr. Megarry, is that a notice with the *Burgess* v. *Jarvis* defect is not an enforcement notice, that there is no point beyond abundant caution in appealing against it to the justices, that they cannot quash it, that it can never "become effective" within *Perrins* v. *Perrins* which can thus be distinguished (assuming that case to be rightly decided), and that it can be ignored without attracting the sanctions of s. 24. This view, of course, assumes the correctness of *Burgess* v. *Jarvis*, as to which I say nothing pending the appeal to the House of Lords. But on the law as it stands, *L. C. C.* v. *Cole* seems difficult to justify, and should be regarded as wrongly decided.

Yours faithfully,

J. D. James.

Temple, E.C.4.

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"Planning Law" Notes

The three county councils in whose areas the Snowdonia National Park comes do not want a joint board for the park, and the Minister of Housing and Local Government, Mr. Macmillan, although himself of the opinion that a single authority would give better results, has consented, as an experiment for three years, to the county councils continuing as the authorities, with a joint advisory committee.

The Journal of the *Town and Country Planning Association* comments on the position as follows : " We have never been sure that the conception of areas of special planning control is in principle sound ; it might suggest that what happens in other areas matters less. If planning powers and administration truly represented a balance of urban and rural interests we would like to see National Park powers in existence all over the land. If they were merely preservative in impulse we would distrust them all over the land. If county boundaries do not correspond to convenient planning sub-regions we would favour revising boundaries or amalgamating counties. We can see the objection of county councils to the loss of powers as fundamental as planning. But we can also see that some councils have a deficient sense of that importance."

The licence-free allowance for building works, other than for industrial and agricultural buildings, has been increased from £100 to £200 for the 12 months from July 1, 1952. The limit of £500 for industrial and agricultural buildings remains unchanged.

The Government are to review the position in the autumn.

The decision of the Minister has been given on an application for planning permission which involved the consideration of conflicting interests on a scale probably not met in any previous case, and is published in this issue (*post*, p. 444) as an appendix to an article on the case by the Deputy Town Clerk of Nottingham.

The application was by the National Coal Board for permission to work coal in the Trent Valley, and involved an extensive consideration of the rights of support of surface owners. In his decision the Minister states that he cannot agree that planning powers should not be used to secure support for surface interests where the circumstances justify this course; and he will consider requests by local planning authorities or other interested parties that he should use planning powers for this purpose, and will not refuse to consider such requests solely on the ground that support could be secured by some other process.

Mr. R. P. Crompton writes: The procedure laid down under Circular 7/52 of the Ministry of Housing and Local Government for simplifying the procedure on compulsory purchase where the matter of dispute is only as to price is not limited, as might appear from the form of agreement provided, to purchases under the Acquisition of Land (Authorisation Procedure) Act, 1946. The Minister has recently given his approval to a modification of the existing agreement in the case of a purchase under Part III of the Housing Act, 1936, of buildings which were within a clearance area but are excluded from a clearance order. The modification excludes references to the Town and Country Planning Act, 1947, and the Acquisition of Land (Authorisation Procedure) Act, 1946.

It appears from a reply to a Parliamentary question (p. 468, *post*) that only four compulsory acquisitions by the Central Land Board have taken place so far this year. This seems to indicate that there will be no great increase in the use of the Board's powers under section 43, following the confirmation of those powers by the courts, notably by the House of Lords in the *Earl Fitzwilliam Case*. It is not clear whether there has been any change in policy since the change of government in November last. The powers of the Minister over the Board are in any event very limited, although no doubt the Board seek to act in conformity with government policy.

Mr. W. A. Leach writes: The decision of the Minister reported at [1952] J.P.L. 419 is interesting. The Minister held that a builder's yard is not a use in Class IV of the Use Classes Order, 1950. As Class IV relates only to buildings, that is unassailable; but the premises in question comprised a builder's yard *and workshop*. Would the workshop not be in Class IV (unless it is in Class III)? Alternatively, if one looks at the use as a whole and decides it is storage would not the building be in Class X, assuming the types of buildings therein referred to ("wholesale warehouse" and "repository") are to be interpreted in the light of the definitions contained in the earlier Use Classes Order, S.I. 1948, No. 954, but omitted from the 1950 Order?

Does reference to the Use Classes Order, 1950, close the matter as the report would seem to imply? Is it really a material change of use to change from a builder's yard and workshop where light work is carried on and plant and materials stored to a place where light work is carried on and (presumably) some materials and goods stored? It is not easy to give an answer with confidence.

The Minister expresses the view that use as a builder's yard and workshop is not industrial (see also [1952] J.P.L. 359 and 360). It may not be industrial in terms of the definition of "industrial building" in s. 119 (1) of the Act, but that definition does not apply in considering what changes of use are material. Leave out special definitions and what are such premises if not industrial? There is no solution in that word.

Is it not wrong that these difficult questions as to what is material should virtually rest on the view of an official, sometimes acting on legal advice taken after the hearing (how often we see that the Minister is "advised"—*e.g.*, in Bulletin Case X/18); or if resting on the view of the Minister personally, is it not wrong that the appellant should not be able to argue his case (which is a matter of law, not policy) before the tribunal which will give the decision, and be unable to hear and answer counsel for the Minister?

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the Managing Editor, *Journal of Planning Law*, 3 Chancery Lane, London, W.C.2. *Every attempt will be made to return drafts or unsuitable copy but no guarantee can be given in this respect. Books for review should be sent to the Publishers at the above address.*

The Trent Valley Coal-working Decision

By S. Lloyd Jones
Deputy Town Clerk, Nottingham

The Minister of Housing and Local Government, in a letter dated December 3, 1951,[1] to the National Coal Board gave the first decision made under the Town and Country Planning Act, 1947, on an application by the National Coal Board for permission to work underground coal. The decision is of considerable importance to local planning authorities and local authorities in coal-mining areas and will have a bearing on the control of the working of other minerals.

The area concerned and the surface interests affected are described in para. 3 of the Minister's letter. To this it should be added that extensive stretches of agricultural and urban land in the proposed coal-working area have in the past been regularly flooded by the waters of the Trent. The working of coal in one seam alone would result in the level of the banks dropping about two feet while leaving the level of the water unaffected, so that an increase in the frequency of flooding and of the area flooded would be inevitable.

The working of coal is development within the meaning of the Town and Country Planning Act, 1947, but the winning and working underground of coal by the National Coal Board in a mine commenced before July 1, 1948, is permitted development by reason of inclusion in Class XX of Sched. I to the General Development Order, 1950. The application of the Act to the National Coal Board is modified by the Town and Country Planning (National Coal Board) Regulations, 1951,[2] which were not made until after the inquiry.

Both the county council and the city council submitted directions made under article 4 of the General Development Order, 1950, for the approval of the Minister during July and August, 1950. The direction made by the county council related to all the seams of coal within that part of the area to be worked which had in the past been subject to flooding

[1] Reproduced at p. 444, *post*.
[2] S.I. 1951, No. 716.

from the River Trent. The direction made by the city council related only to the two seams known to be likely to be worked in the measurable future but covered not only the area in the city which had suffered from flooding but also the whole of the area within the city in which the seams were likely to be worked. The Minister confirmed these directions in August, and in October directed under s. 15 that any application made by the National Coal Board in consequence of these directions should stand referred to him. Early in November an application was made by the Board in respect of the area included in the county council's direction only and by the end of the month the Minister had fixed an inquiry to be held in December.

The Corporation's interests

The Corporation's two outfall sewers, each about six feet in diameter, run from the city to the sewage disposal works and farm, for a distance of about two miles, largely through the area of the county council's direction. They have a gradient varying between 1′ in 1,500′ and 1′ in 3,200′ and for about one mile are in an embankment above ground level. They are the only effective outfall sewers serving a population of over 400,000. The sewage disposal works, when an extension now in hand is completed, will cover an area of 25 acres. A large part of the farm of about 2,000 acres is used for spreading the sludge and has been especially underdrained for this purpose. The Board require the consent of the Corporation as land-owners to work the coal under about two-thirds of the farm, including the site of the works, by reason of it being coal to which s. 33 of the Coal Act, 1938, applied, *i.e.*, the freehold both of the surface and coal had been acquired under statutory powers for the purpose of sewage disposal and was held for that purpose on the date of the passing of that Act. Negotiations between the Corporation and the Board led to agreement that support would be left for the works and that the remainder of the area to be worked under the farm would be worked by partial extraction methods. Also within the area of the direction of the county council is the Corporation's water pumping station. Agreement had not been reached for its protection nor for the protection of the outfall sewer.

Because the application of the Board was called in by the Minister, there had been no formal indication by the Nottinghamshire County Council of the points on which they

were opposed to the Board's application, nor, by reason of the speed with which the Ministry had acted, was there an opportunity for other interests apart from the Corporation to come forward. Thus the Board did not know until the inquiry opened the full extent of the interests opposed to their application.

At the local inquiry, which lasted for six days, were represented, in opposition to the National Coal Board :—

1. The Nottinghamshire County Council, as local planning authority.
2. The Nottingham Corporation, as owner of the outfall sewer and water pumping station.
3. The councils of county districts affected, one of which was an urban district council concerned about its sewers which connected to the Corporation's outfall sewer.
4. The Trent River Board.
5. A trading estate, embracing 17 firms.
6. The parish council of a village likely to be severely affected by further flooding from the Trent.
7. The National Farmers' Union.

During the inquiry, the Board agreed to provide protection for the trading estate and also reached agreement with the River Board. The agreement with the latter and the issue between the Board and the Corporation regarding the outfall sewer and the pumping station formed the main points of legal consequence.

The Arrangement between the River Board and the National Coal Board

It was not disputed by the Board that in the absence of special drainage works the subsidence would cause more frequent and extensive flooding from the River Trent and would result in the raising of the water table in the land adjoining the river with consequent depreciation of its value for agriculture.

The River Board had in hand an extensive flood alleviation scheme for part of the river above the area likely to be affected by the subsidence and already intended to extend the scheme downstream to include that area. The Board's engineer, who was called as a witness by the county council, was satisfied that it was practicable to offset the effect of subsidence by raising the proposed flood banks to an extent equal to the subsidence, and, if necessary, by pumping. The River Board asked for, in addition to a pillar of support for sluices which

formed part of the flood alleviation scheme, an undertaking from the National Coal Board to pay the cost of any drainage works which might become necessary as a result of the subsidence. Part II of the Doncaster Area Drainage Act, 1929, had placed the National Coal Board, as successors of the former mine owners, under such an obligation in respect of the area around Doncaster and the report of the Turner Committee [3] had recommended legislation to enable the provisions of that Act to be made available generally to mining areas. The National Coal Board's representatives at the inquiry had accepted such an obligation in respect of the area which was the subject of the inquiry and the Minister in his letter of decision expressed himself satisfied that works by the River Board, added to the works initially intended, would largely obviate damage, and in these circumstances he declined to sterilise coal solely for the purpose of protecting agricultural land. An important precedent has thus been established. It remains to be seen whether the River Board's powers under the Land Drainage Act, 1930, and the River Boards Act, 1948, are adequate to implement the arrangement without further legislation.

The Issue between the Corporation and the National Coal Board

The issue between the Board and the Corporation, stated shortly, was whether the Minister should use the Town and Country Planning Act, 1947, to protect the Corporation's surface works or should leave the Corporation and the Board to such rights as they each had under existing legislation. The existing legislation is :

1. S. 33 of the Coal Act, 1938.
2. S. 8 of the Mines (Working Facilities and Support) Act, 1923.
3. " The Mining Code " (see below).

and the issue was in practice limited to the mining code versus the Town and Country Planning Act, 1947.

The Corporation's water pumping station, but not the outfall sewer, is entitled to the benefit of s. 33. By reason of this section, the Corporation's consent is required to work the coal directly under the station, and some of the coal which afforded lateral support to the station. The Board can refer the question of whether the consent is reasonably withheld to

[3] The Report of the Departmental Committee on Mining Subsidence. Cmd. 7637.

the High Court who, in determining the question, must have regard primarily to the safety and efficient working of the undertaking in question (s. 33 (5)). Where the section applies, it is adequate to protect a surface work and has the advantage to the local authority that the Board may not claim compensation in respect of any coal sterilised. In practice, the section usually applies where the local authority or undertaker had, before the vesting of coal in the Coal Commission under the Coal Act, 1938, purposely purchased the coal in order to support their works, and s. 33 is, in effect, giving them statutory protection for what the authority or undertaker previously were able to protect by right of ownership. The local authority or statutory undertaker owning the surface works and the National Coal Board are the only two parties concerned under the section and there is no means whereby the local planning authority can join in in order to ensure that a comprehensive view is taken.

S. 8 of the Mines (Working Facilities and Support) Act, 1923, enables any person (including local authorities and undertakers) [4] having an interest in any land but not entitled to support or sufficient support to apply to the court for a restriction upon the working of coal (or any other mineral) required for support, which the court may do if satisfied that it is in the national interest. S. 8 (5) provides that compensation is to be paid to the Board [5] or other mineral worker on the basis (see s. 9) "of what would be fair and reasonable between a willing grantor and a willing grantee, having regard to the conditions subject to which the right is or is to be granted."

The Mining Code

There are, in effect, three mining codes :—

1. The unamended provisions of ss. 78 to 85 of the Railway Clauses Consolidation Act, 1845. In their application to most railways, these sections have been amended; see para. 2 below. This code may be incorporated in a compulsory purchase order made under the Acquisition of Land (Authorisation Procedure) Act, 1946.[6]

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[4] Coal Act, 1938. Second Schedule, Pt. II: para. 6 (5).
[5] But see Coal Act, 1938 (Second Schedule, Pt. II, para. 6 (4)).
[6] See para. 7 of Pt. II of Sched. II, Ministry of Health Circular 126/46, Ministry of Local Government and Planning Circular 42/51, and Ministry of Housing and Local Government Circular 45/52.

2. The provisions of ss. 78 to 85 of the Act of 1845 as amended by Part II of the Mines (Working Facilities and Support) Act, 1923, which apply to most railways.[7]
3. Ss. 12 to 18 of Sched. III to the Water Act, 1945, which replace ss. 19 to 27 of the Waterworks Clauses Act, 1847.

There is no material difference between the old and the new waterworks mining code. Both apply only where incorporated. Where the old code was incorporated before its repeal it remains in operation so long as the incorporating Act remains in operation. In particular, the old code is incorporated with slight modifications, in the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883, and applies to "sanitary works" as defined in that Act, *i.e.*, works of sewerage, drainage, sewage disposal, lighting or water supply.

It is not proposed to discuss here the intricacies of this branch of legislation. The scheme of all three mining codes can be put shortly as follows. The mine worker is required, 30 days before entering within 40 yards of the surface works entitled to the protection of the code, to give notice of his intention to the authority and not to work in this prescribed area until the expiration of 30 days. The authority can then give a counter notice relating to all or part of the code to which the original notice related and the mine worker may not then work the coal to which the counter notice related. If the counter notice is not served the coal may be worked, and provided it is done in a proper and usual manner the mine worker is not liable for any damage to the works. There is, however, this difference between the railway code, amended and unamended, and the waterworks mining code, that the former, where it is applicable, excludes any other right which the surface owner may have at common law or have inherited from the previous owner, whereas the latter does not exclude such rights.

The defects of the mining code are numerous. The 40 yards protection is inadequate against the working of the deep seams now being mined; the code is not flexible enough to provide for means of protection such as partial extraction or other such methods of working, but provides only for a solid pillar of support; and as the decision whether or not to operate the code, if available, rests entirely with the owner of the code-protected work, the consequence on other property

[7] *i.e.*, those built under Special Acts incorporating the Act of 1845 or containing provisions similar thereto.

of leaving a pillar for the works is often not considered. The Turner Committee said of the code (see para. 15 of the report):

> In view of the evidence put before us it is in our opinion unnecessary to say more about the Mining Code than that there is an overwhelming consensus of opinion that, although certain of the underlying principles are useful, it is out of date, it is unnecessarily complicated and illogical, and does not adequately meet the real requirements of the problem.

The procedural defects can to a large extent be overcome by agreement between the surface owner and the mine worker, if the surface owner agrees to pay to the mine worker the same sum as would have been paid if the code had been operated. Compensation under the mining code is assessed on the amount which the mineral owner would have made out of the minerals during the time he would have taken to get them if he had not been prevented from working by the service of a counter notice; in other words the market value of the minerals when raised less the cost of raising them. The fact that by a slight adjustment of his workings the owner of the mine could continue to work without interruption or loss, and that by doing so the loss of the sterilised coal would not be felt until the whole seam was exhausted, would not make any difference. Nationalisation did not alter this basis. The Town and Country Planning Act, 1947, would have had an effect if its application to the National Coal Board had not been modified by regulations so as to place unworked coal in the same position for the purposes of Parts VI and VII of the Act as operational land of statutory undertakers. If the profit to be earned from each ton of coal brought to the pit-head is, say, two shillings, then the number of tons of coal sterilised must be multiplied by that figure with an appropriate allowance for any deferment there may be due to the date when the coal would be worked. Bearing in mind that a pillar, in order to be effective, has to be of a radius of between one-third and one-half of the depth of the seam from the surface works and that seams may be two to five hundred yards deep, it will be seen that the amount of coal which may need to be sterilised in order to provide a pillar for quite a small surface work can run into hundreds of thousands of tons. Surface owners to whose works the code applies very often do not exercise their rights because of the amount of compensation which would have to be paid.

Relating this now to the issue between the Corporation and the Board, in the Trent Valley case, the amount of coal in one

seam which is needed to be sterilised to support the Corporation outfall sewer is something like 800,000 tons in the county alone, and a similar amount of coal would be sterilised if a solid pillar of support were left for the water pumping station; the pits from which the seams are to be worked are in one of the most profitable areas of the Coal Board's organisation.

On the other hand, if these works were protected by a decision of the Minister under the Town and Country Planning Act a different basis of compensation would apply. As already mentioned, at the time the inquiry was held, the Town and Country Planning (National Coal Board) Regulations, 1951, had not been made, although the lines on which they were being drafted was known to the parties. Para. 3 of Sched. II to the regulations, lays down a special basis for calculating the compensation payable to the Board where the Board are refused permission to work underground coal in an existing mine. It is complicated in its language and does not lend itself to being summarised but a somewhat free paraphrase of its provisions is as follows. Compensation is to be the aggregate of :—

(a) expenditure at the mine which, as a result of the planning proceeding, is necessary for the purpose of maintaining the estimated output of that mine;

(b) further expenditure in taking steps to comply with the proceeding, and

(c) reasonable compensation for any decrease in net receipts directly attributable to the proceeding, being receipts which it is estimated would have been derived from the mine if the proceeding had not had effect,

excluding from (a) and (b) any expenditure under (c) and excluding from all heads, any expenditure which would have been necessary if there had been no planning proceeding, but allowing for expenditure incurred earlier than would otherwise have been the case. The regulations require that in assessing the loss due to the proceeding a number of factors including its effect on the whole of the mine shall be taken into account, thus allowing to be brought into account what could not be brought into account under the mining code, namely, the possibility of the workings being altered so that there would not immediately be any loss due to the sterilisation of coal. It seems likely, and in view of the complicated language of the regulations, it can be put no higher, that where the proceedings are taken sufficiently in advance of the workings to enable the Board to rearrange their workings,

and particularly where there is a substantial area of the seam unaffected by the proceeding, the compensation will work out at a less amount than it would under the mining code.

The Board argued at the inquiry that the question of whether or not the Minister should use planning powers to protect the Corporation's works must be considered against the background of the law which applied generally to the underground workings of coal by the Board. Generally, the Board is free from planning control by virtue of the underground working of coal being permitted development but is subject to other legislation which applied apart from the Town and Country Planning Act, 1947. That other legislation, it was said, worked in practice satisfactorily elsewhere and it had not been shown that the circumstances in the area to which the direction related were so exceptional that it would not work satisfactorily in that area also; in these circumstances the Minister should not use planning powers adversely to the Board but should leave the relations between the Board and the surface interests to be settled by resort to other existing legislation. In addition, evidence was given on behalf of the Board that on engineering grounds solid pillars of support were not needed for the Corporation's outfall sewer and water pumping station.

For the Corporation it was said that the question was whether a certain strata of the land should be got for coal or whether it should be left to support a surface work and that this went to the very essence of planning the use of land. If the Minister declined to adjudicate on this issue he abdicated his position as a Minister responsible for planning. Evidence was given that the sewer needed a solid pillar of support of a radius equal to one-third of the depth of the seam and that the pumping station needed either a solid pillar of support or protection by special methods of working.

As will be seen from para. 6 of the letter, the Minister accepted that he would be justified in using planning powers to protect surface works and that the sewer needed a solid pillar of support and that the pumping station needed protecting against mining subsidence. That there are limitations on the circumstances in which the Minister will use planning powers to protect surface works is very evident from the terms of para. 13 of the letter, which states :—

> The Coal Board's proposed operations may also cause damage to the services of local authorities and to other property in the area of the application. The only way to prevent such damage altogether would

be to sterilise the coal under the area concerned, and such a solution is economically justifiable only where surface installations of exceptional value or of exceptional importance for the maintenance of public services are involved. The Minister notes, however, the Coal Board's existing liabilities at common law, under the Coal Act, 1938, and under the Coal-Mining (Subsidence) Act, 1950.

It would plainly be very exceptional for a sewer to obtain a pillar of support under planning powers and the Corporation's outfall sewers obtained support in this particular case because of the combination of special circumstances referred to earlier. It can be taken as a general rule that planning powers will not be used to provide a solid pillar for the protection of sewers or similar works such as water and gas mains; but the powers might be used by the imposition of conditions to regulate the method or speed of working in order to minimise damage.

Compensation

Compensation payable under the regulations has to be paid by the local planning authority. S. 98 of the Town and Country Planning Act, 1947, empowers a *local* authority to make a contribution to the expense of the local planning authority in paying compensation and the Minister can require such a contribution to be made. The Minister may direct that no compensation should be recovered by the National Coal Board in respect of any pillar of support that he might require to be left if he and the Minister of Fuel are satisfied " . . . that it is unreasonable, having regard to the nature, situation and existing development of the land and of any neighbouring land, and to any other material considerations, that compensation should be . . . recovered . . . ."

The representative of the county council asked the Minister so to direct in respect of any pillar of support which might be left for the outfall sewer. The Minister declined to do so in respect of the outfall sewer (see para. 16 of the letter of decision) but (see para. 17) seems to be prepared to consider doing so in respect of any coal which may be sterilised to support the water pumping station. The only difference in the " material considerations " relating to the two works is that if the mining code had been used to protect the outfall sewer compensation would have been payable (by the Corporation) but if s. 33 of the Coal Act, 1938, had been used to protect the pumping station, compensation would not have been payable.

The Report of the Turner Committee; the Present Position

It is worth while comparing the Minister's decision in the Trent Valley case with the recommendations of the Turner Committee. The most important recommendation of the Turner Committee was the institution of the "key points" principle. A schedule of key points would be prepared by the Ministry (then of Town and Country Planning). If the inclusion of a particular property in the list were disputed by the Board or the proposed exclusion of it were disputed by another party, there would be reference to a Tribunal presided over by a High Court Judge or other eminent legal authority, as the Committee thought that local planning authorities and the Minister would not wish to accept the responsibility for decisions of this kind. The guiding principle in scheduling is suggested in paras. 71 and 72 of the report:

> 71. The guiding principle should be to grant a statutory right of support to all those surface works or buildings which play so vital a part in the life of the community or a section of it that the risk of interruption of their functioning or of serious damage to their structure cannot be tolerated. It is impracticable to give a complete catalogue of such works or buildings here, but what we contemplate may be inferred from the following examples.
>
> 72. In the field of public services large power stations, gasholders, reservoirs, main sewage works and certain viaducts are prima facie clear examples of "Key Points." They may be repairable if damaged, but the possible interference with the life and health of a local community or the physical danger while they are wholly or partly out of action must be held to outweigh the value to the country at large of working the coal beneath them. On the other hand, the network of pipes and roads by which these services become available to individual members or groups of the community, although interference with them causes inconvenience, cannot ordinarily claim to outweigh the immense and sometimes paralysing difficulties which the granting of support to them would cause to the working of the coalfield. Under our system the former class would be given a statutory right of support, the latter one of compensation for damage only.

The recognition by the Minister that planning powers are available to control the underground working of coal has gone a long way to fulfil this recommendation. The similarity of the language of the Minister's letter with that of paras. 71 and 72 of the report is remarkable.

The final decision under the Act of 1947 is made by the Minister and not by an independent tribunal. The problems involved in such decisions stand so close to the central problems of planning that it would surely be a mistake if they were to be dealt with differently from other planning

problems, and it is to be hoped that legislation will not take the decision out of the Minister's hands.

The Turner Committee also recommended in para. 67 that the principle of the Doncaster Act should be applied generally and here the Minister, helped no doubt by agreement between the parties, applied the principle to the Trent Valley.

The Report envisaged that alongside the establishment of the key points principle, there would be a sweeping away of all existing rights of support and that rights of support would rest solely on the principle of a key point. Damage to all surface buildings and works would be compensated. The Coal-Mining (Subsidence) Act, 1950, by obliging the Board to compensate for damage to dwelling-houses of the rateable value not exceeding £32 gives partial effect to these recommendations. The present Government is not prepared to introduce further legislation until the economic position improves.[8]

Ministry's Decision

Letter of Ministry of Housing and Local Government to the Production Director, National Coal Board, Nottingham, dated December 3, 1951

Sir,

Application for planning permission to work coal under part of the Trent Valley

1. I am directed by the Minister of Housing and Local Government to refer to the National Coal Board's application dated November 9, 1950, relating to the winning and working of coal from Gedling and Clifton Collieries, Nottingham. The application was submitted to the Nottingham County Council and referred to the Minister for decision in compliance with a direction made on October 27, 1950, under s. 15 of the Town and Country Planning Act, 1947.

2. In July and August, 1950, the Nottingham County Council and the Nottingham County Borough submitted for the Minister's approval, directions under article 4 of the Town and Country Planning General Development Order, 1950. The effect of these directions was to remove the permission granted by Class XX (1) of that order for the working of coal, in the area covered by the directions, namely the outskirts of the city of Nottingham and part of the Trent Valley lying to the east of Nottingham. Both of these directions were confirmed by the Minister. The National Coal Board made an application for planning permission to work coal under the area covered by the Nottingham County Council's Direction, and this is the application now under consideration. A local inquiry was held by one of the Minister's Inspectors, Mr. S. T. Roberts, M.I.MUN.E., between December 20, 1950, and January 4, 1951.

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[8] See reply of Minister of Fuel and Power to questions May 5, 1952. *House of Commons Debates*, Vol. 500, col. 11.

3. The application covers an area of more than 7,000 acres, extending over about six miles of the Trent Valley from West Bridgford in the south-west almost to Gunthorpe in the north-east. This part of the Trent Valley is flat-bottomed and about two miles wide, with steep hills on each side. The area contained 5,600 acres of agricultural land, certain residential districts and a number of outlying villages. Near Netherfield there are some important industrial concerns, including petrol companies, a sugar beet factory and a gravel pit. At Burton Joyce is the Nottingham Corporation's water pumping station, which helps to supply two of the Corporation's reservoirs. The Corporation's sewage disposal works are at Stoke Bardolph and the main sewer to these works lies within and follows the north-western boundary of the application area for about 3,300 yards. Also in the area are roads, railways (including bridges, a viaduct and a large marshalling yard at Netherfield), docks and canals.

4. The National Coal Board propose to work coal under the area shown edged brown on the plan accompanying the application. Their intention is to work the Low Hazel seam from Gedling Colliery under the land shown coloured pink on the plan, and the Deep Soft seam from Clifton Colliery under the land shown coloured green. The plan submitted with the application shows that some of the Low Hazel seam is to be worked by partial extraction methods, and that a pillar of support is to be left under the sewage farm at Stoke Bardolph. Some doubt was expressed at the inquiry whether the coal under the land left uncoloured on the part of the plan showing the area of partial extraction was included in the application. Counsel for the Coal Board maintained that the application covered the coal under the whole of the area edged brown on the plan. The Minister is advised, however, that the application relates only to the coal in the Deep Soft and Low Hazel seams under the areas shown coloured green and pink respectively on the application plan, and that the coal under the areas left uncoloured on the plan is not included.

5. It was stated on behalf of the National Coal Board at the local inquiry that the output of coal from Gedling Colliery is about 4,000 tons per day and output per man-shift is well above the national average. Three-quarters of the colliery's production comes from the Low Hazel seam, which contains about 18 million tons of coal and has an estimated life of from 32 to 35 years; if the present application were not allowed the life of the seam would be reduced to 16 years. The Board's proposal to work some of the seam by partial extraction will reduce the amount of coal won to 16 million tons. Output at Clifton Colliery is about 1,400 tons per day and the output per man-shift is above the national average. Daily output and output per man-shift would be increased at this colliery if the present application were allowed. The Deep Soft seam worked from Clifton Colliery contains about 5 million tons of coal. The total tonnage involved in the application is therefore 21 million tons for the two collieries. In the Coal Board's opinion, the subsidence likely to follow the working of the Low Hazel seam would be 16 ins. to 25 ins. in the total extraction areas and 0 ins. to 8 ins. in the partial extraction areas. The working of the Deep Soft seam by total extraction would probably lead to a subsidence of 23 ins. to 25 ins.

6. A large number of interests on the surface would be affected by this subsidence and by the increased flooding that might result. At the

local inquiry representatives of the National Coal Board said that authorities such as the Nottingham Corporation and British Railways had the right to ask for support under the Mining Codes or other statutory provisions and that it was unnecessary to deal with such matters by the exercise of planning powers. Underground mining is development within the meaning of the Town and Country Planning Act, 1947, and is subject to planning control. It is the responsibility of the Minister to co-ordinate underground mining with the surface development of land to the minimum detriment of either. He cannot agree that planning powers should not be used to secure support for surface interests where the circumstances justify this course; and he will not refuse to consider requests by local planning authorities or other interested parties that he should use planning powers for this purpose, solely on the ground that support could be secured by some other process.

7. In considering his decision, therefore, the Minister has paid attention to the probable effects of subsidence on important surface interests, notably the Nottingham Corporation's main outfall sewer; their water pumping station at Burton Joyce and other public services; the village of Burton Joyce itself; industrial installations; river works; and the drainage of agricultural land. On the other hand, although it appears that they will be affected by the Coal Board's proposals, British Railways offered no evidence at the local inquiry and have not asked the Minister to use planning powers to secure support for any of their land. He has, therefore, assumed that they are content to rely on the Mining Codes for any support they may require, and has accordingly taken no account of their interests in arriving at his decision.

8. The Minister considers that a danger to property and to public health would arise if the Coal Board were allowed to work coal under the line of the Nottingham Corporation's main outfall sewer, and that the risk of a fracture in the sewer cannot be taken. Consequently, an adequate pillar of support must be left. The Nottingham Corporation submitted at the inquiry a plan showing the pillar of support they required. The Minister considers that the exact size and shape of the pillar can best be determined by discussions between the parties directly concerned and his decision provides for this.

9. The Minister is of the opinion that no mining should be allowed which might put the Burton Joyce water pumping station out of action. The evidence given at the inquiry did not make it clear whether it is essential for the protection of the station that a pillar of support should be left. It was suggested that the adoption of special mining methods might give adequate protection without sterilising any coal. As the National Coal Board do not intend to work under the pumping station for several years the Minister proposes to defer his decision on the area concerned so that the Coal Board and the Nottingham Corporation may discuss this matter further with the local planning authority. He would like to be informed in due course of the outcome of these discussions so that he may issue his decision.

10. It was reported at the local inquiry that the National Coal Board were entering into separate agreements with the Colwick Industrial Estate and the Docks and Inland Waterways Executive. The Minister has been informed that formal agreements between the National Coal Board and the various firms occupying the Colwick

Industrial Estate have been drawn up, and that the Board have reached an informal understanding with the Docks and Inland Waterways Executive. He has noted the contents of these agreements and, as the parties concerned are satisfied with the arrangements made in them for the provision of support, he has decided to make no special provision in his decision for these undertakings.

11. It is clear from the evidence given at the inquiry, that the subsidence caused by the National Coal Board's proposed workings will, in the absence of any counter-measures, increase the area of land liable to flooding. This would affect a large amount of agricultural land, and in times of exceptional flooding certain parts of the villages of Burton Joyce, Shelford and Holme Pierrepont; it is at the first of these villages that the danger appears to be most serious. Apart from the land directly affected by additional flooding, the agricultural value of further areas would be reduced by periodical waterlogging. The Minister has consulted with the Minister of Agriculture on this point; he understands that the Trent River Board, after dealing with the flooding at Nottingham by their present Flood Prevention Scheme, will in due course be turning their attention to the adjacent reaches of the river. It is obviously desirable that the execution of future land drainage works and the Coal Board's mining operations should be co-ordinated so that the risk of flooding is minimised. This can best be achieved by close consultation between the two authorities, so that the River Board may have the information necessary to enable them to design drainage works with due regard to the subsidence that may be expected and to carry these out where necessary in advance of that subsidence at the more important points.

12. At the inquiry a representative of the River Trent Catchment Board produced a document setting out certain obligations which the Catchment Board considered should be undertaken by the Coal Board. The broad effect of this document was to require the Coal Board to carry out or bear the cost of works on the drainage system and drainage works of the Catchment Area that might become necessary as a result of subsidence. Representatives of the Coal Board stated that the Board accepted these responsibilities in principle. Assuming there is proper co-ordination of work between the Coal Board and the River Trent Catchment Board (now the Trent River Board) on the basis of this undertaking, the flood damage and damage drainage systems and drainage works that might otherwise be caused as a result of the underground works now proposed should be largely obviated. In these circumstances, the Minister does not think that he could justify the permanent sterilisation of the very large quantity of coal that would have to be left to maintain the surface at its present level in the river valley.

13. The Coal Board's proposed operations may also cause damage to the services of local authorities and to other property in the area of the application. The only way to prevent such damage altogether would be to sterilise the coal under the area concerned, and such a solution is economically justifiable only where surface installations of exceptional value or of exceptional importance for the maintenance of public services are involved. The Minister notes, however, the Coal Board's existing liabilities at common law, under the Coal Act, 1938, and under the Coal-Mining (Subsidence) Act, 1950.

14. The Minister has consulted the Government Departments concerned and has decided in the exercise of his powers under the Town and Country Planning Act, 1947, to grant permission for the winning and working of coal from the Low Hazel seam from Gedling Colliery under the area shown coloured pink on the accompanying plan, and from the Deep Soft seam from Clifton Colliery under the area shown coloured green, subject to the condition that a pillar of support shall be left under the Nottingham Corporation's main outfall sewer. The extent of this pillar shall be agreed between the National Coal Board and the local planning authority in consultation with the Nottingham City Council, or, in the event of disagreement, as shall be determined by the Minister.

15. A decision relating to the area shown hatched diagonally will be given later. A decision on the area shown cross hatched was issued as an interim measure by the Minister on January 20, 1951. This letter, which is issued as the Minister's formal decision, does not purport to convey any approval or consent which may be required under by-laws or Acts other than the Town and Country Planning Act, 1947.

16. At the local inquiry, it was suggested on behalf of the Nottingham County Council, that the Minister should direct that no compensation should be recovered by the Coal Board in respect of any pillar of support that might be left for the outfall sewer. Under the Town and Country Planning (National Coal Board) Regulations, 1951 (S.I. 1951, No. 716), which have been made since the inquiry was held, the Minister may make such a direction provided that he and the Minister of Fuel and Power are satisfied ". . . that it is unreasonable, having regard to the nature, situation and existing development of the land and of any neighbouring land, and to any other material considerations, that compensation should be . . . recovered . . . ." It is the view of the Minister and the Minister of Fuel and Power that the National Coal Board should not be debarred from recovering compensation in respect of the provision of support from the outfall sewer, and the Minister does not propose to issue a direction in the present case.

17. The coal under the Burton Joyce pumping station is, however, subject to section 33 of the Coal Act, 1938, and the Nottingham Corporation could, under that section, require the coal to be left unworked without paying compensation to the Coal Board. When he comes to consider his decision on this area, the Minister will take this factor into account.

18. Copies of this letter have been sent to the local authorities and Government Departments concerned.

Scheme under Section 59 of the Town and Country Planning Act, 1947

By W. A. Leach, F.R.I.C.S.

Few people claim to understand the scheme made by the Minister under section 59 of the Act of 1947.[1] To most it is a matter of two rules: if A is greater than B you get C; if A is not greater than B you get D. The difficulty in understanding the scheme is that it is not logical.

I. Under the War Damage Act, 1943, a value payment might have been arrived at as follows :—

	£
Before damage value	
House suitable for conversion to shop ..	1,200
After damage value	
Site suitable for shop	500
Value payment	£700

If the land had been restricted at the date of damage as under the 1947 Act, the calculation might have been :—

	£
Before damage value	
House	1,000
After damage value	
Site for house	200
Value payment	£800

The value payment represents the value of the building formerly on the land, and what might be called the "best value" of the *building* in this case is its value as restricted, for on that footing the value payment would have been £100 higher.

II. The breakdown of the capital value of the interest indicated above would be :—

[1] The Planning Payments (War Damage) Scheme, 1949 (S.I. 1949, No. 2243); [1950] J.P.L. 41.

	£
Before damage value	1,200
Value payment	700
Unrestricted site value	500
Claim under s. 58, £500–£200	300
Restricted value of site retained by owner	£200

Thus the owner will receive in any event compensation in respect of, but not necessarily equal to, the total reduction from unrestricted before damage value down to restricted site value.

III. The logical purpose of the s. 59 scheme would be to pay *in cash and in full* so much of the development value claim as is equal to the difference between the " best value " of the building and the value payment, which would leave only the balance of the s. 58 claim to be met under the latter section, and the above capital break-down ought to become, from the line " unrestricted site value " :—

		£	
Unrestricted site value		500	
Claim under s. 59 (payable in full)	£100		(800–700, see
Claim under s. 58 (composition only receivable)	200		I above)
		300	
Restricted site value		£200	

IV. Owing to changes in prices as between 1939 (by reference to which the value payments are calculated) and 1947, the fact that value payments were apportioned, the difficulty of re-calculating apportionments on the " best value " of the buildings, and some confusion in the minds of the Central Land Board (*cf.* para. 3 of the C.L.B. Pamphlet on the s. 59 scheme with para. 7 of the Explanatory Note to S.I. 1949, No. 2243 making the scheme : [1950] J.P.L. 199 and 51), the s. 59 scheme is a very imperfect application of the principle as set out above.

First the new valuation as restricted to find the " best value " of the buildings is calculated as in 1947, presumably so that it may be in line with the s. 58 valuations. It is not, therefore, properly comparable with the value payment arrived at on 1939 prices. This new valuation is known in the

s. 59 scheme as the " war damage depreciation in the restricted value " and will hereafter be called shortly the " war damage depreciation."

Two rules have been laid down (subject to the land and the claimant complying with various qualifying conditions) :—

(1) If the loss of development value as valued under s. 58 is less than the war damage depreciation, the development value will be paid in full under s. 59.

(2) If the loss of development value exceeds the war damage depreciation, the loss will be paid in full under s. 59 up to the amount of the war damage depreciation less any value payment received by the claimant.

V. Considering the above example in the light of the rules :—

	£
The loss of development value is	300
The war damage depreciation is	800

£300 being less than £800, rule (1) applies and £300 is payable in cash and in full under s. 59.

Thus rule (1) departs from theory as in III, and whether the owner received the whole or none of the value payment he has his claim paid in full under s. 59.

Consider next the following case :—

Value payment	£
Before damage value	
Small old building on valuable site capable of more valuable use	6,000
After damage value	
Site for larger building and more valuable use	5,000
Value payment (all received by s. 59 claimant)	1,000

War damage depreciation	£
Before damage value	4,000
After damage value	2,000
War damage depreciation	£2,000

Loss of development value

£5,000 – £2,000 .. .. .. = £3,000

Here the loss of development value exceeds the war damage

depreciation and rule (2) applies the principle in C above, *viz.*:—

Claim under s. 59

War damage depreciation £2,000 less value payment of £1,000 = £1,000 payable in cash and in full.

Claim under s. 58

Loss of development value £3,000 less £1,000 payable under s. 59 = £2,000 to be met as may be provided for in the s. 58 scheme.

In this case, if the claimant had received no share of the value payment, his claim under s. 59 would be for £2,000, *i.e., the less his concern in the original value payment which is the reason for the making of the s. 59 scheme, the better he is treated.*

It might be a more reasonable solution that in all cases where value payments have been made the claim should be met in part under s. 58 in accordance with the scheme thereunder and the balance paid out under s. 59. Owners of war damaged land have lost the appreciation in property prices due to falling monetary values and in order to replace their buildings must find a considerable amount of new capital; they have lost their income for many years; and their claims are reduced under s. 58 by being relative only to site value (very often valued subject to deferment) and not to the value of land and buildings. For example, a claim on a large house suitable for conversion to office use might be £5,000 whilst the effect on site value might be only £1,000.

As it is anticipated that claims will be met to the extent of 80 per cent. under s. 58, the burden falling on the State under s. 59 from this proposal would not be heavy, whilst the difficult border-line cases as illustrated by correspondents in [1951] J.P.L. 283 and 365 would be eliminated.

Valuations under the Town and Country Planning Act, 1947—II

By Claude Bennett, f.r.i.c.s., f.a.i.

[*continued from p. 387, ante*]

B. Development Charges—Limited Planning Permissions

In many areas, particularly those which have suffered severe war damage, local planning authorities whilst appreciating that certain forms of development for which applications have been made may, in fact, be contrary to their future proposals, but realising that their own schemes are unlikely to reach the state of fruition within a certain number of years, are prepared to grant limited or conditional planning permissions. Very often the term will be confined to 5, 10, 15 or 20 years, in which case if it is a condition of the grant of planning permission the developer will be expected to restore the land to its " existing use " at the end of the period concerned. If, however, no such condition is made then it may reasonably be expected that a further application on the expiration of the original term will result in an extension of the period granted. The refusal of this extension, however, carries with it no right to compensation.

In both these cases the Central Land Board will give effect to the length of the term granted in the assessment of the development charge, and will, moreover, expect a reassessment to take place at the beginning of each succeeding term granted and in those cases of temporary buildings where the planning permission contains no conditions as to the removal of works, the Board is prepared to give the applicant the choice of two distinct methods of assessment, both of which are illustrated in the following examples. The advantage derived from method (A) is that whilst a development charge may be payable for each period of planning permission it will be based on the capitalisation of the difference in rental values between the consent and refusal value of the land itself so that it is not likely to vary to any extent for each successive period. Method (B) however is calculated to take into consideration the cost of the structure by means of the

amortisation of the capital sum involved so that generally speaking it is unlikely that a development charge will be assessed for the initial period. If, however, a further grant is made the development charge for this period is likely to be considerably in excess of that calculated in method (A) as for the second term the valuation for consent value will have no regard to building costs.

Example 1 is intended as an illustration of a straightforward assessment of a development charge where planning permission has been granted without reservation, and where the land in question has an authorised user for open storage purposes.

This method of limiting the charge is not only confined to building operations but will be applied in those cases where the development consists of a change of use.

Example 1

In 1939 "A" took a plot of land measuring 48ft. by 60ft. on a building lease for 99 years at a ground rent of £20 per annum. Whilst the outbreak of war prevented development the land has been used for open storage. In September, 1948, "A" obtained the necessary planning permission, etc., to construct his building. Assess the development charge payable.

Valuation

(1) *Consent Value*:

Ground rent	£20 p.a.		
Y.P. 87 years at 5½% ...	18	=	£360
(unsecured)	—		

(2) *Refusal Value*:

Land (open storage space) at 1s.	2880 f.s.		144
Development charge payable		=	£216

Example 2

Similar circumstances as in Example 1, but in this case planning permission is granted for 20 years only, and contains no condition as to the removal of the work at the end of this period.

Valuation

(1) *Consent Value*:

Ground rent	£20 p.a.	
Y.P. 20 years at 5½% and 2½%	10.6	= £212
Reversion to:		
Land (open storage space) 2880 f.s. at 1s.	£144	
Present value of £1 in 20 years at 12%	.10	= 15 = £227

(2) *Refusal Value*:

(As in example 1)	£144
Development charge payable	= £83

Whilst the critic will say that a development charge based on this calculation is theoretical rather than practical, there is the obvious argument that if a developer is prepared to incur a considerable expenditure on a building which will have a certain life of 20 years only, then the value of the land on which his building is to stand is worth something more to him than "open storage" value. The true test is, of course, that no developer would accept a condition such as this unless he could see his way clear to cover his expenses and make a satisfactory profit during the 20-year period.

Example 3

In this case an application has been made and planning permission granted for a period of 10 years for the erection of a temporary building on a small plot of land recently used as a kitchen garden. The permission makes no condition for the removal of works at the end of the term. The initial cost of the building is £425 and erection costs will amount to £16. The consent value of the land is estimated at £180 and refusal value at £18. Calculate the development charge payable.

METHOD (A)

(1) *Consent value*:	= £180		
Annual equivalent @ 5½%	= £10		
Y.P. for 10 years @ 5½% + 2½% ...	= 6.9	=	£69
Reversion to refusal value	£18		
Present value of £1 in 10 years @ 5½%	.59		£11
			£80
(2) *Refusal value*:			£18
Development charge			£62

METHOD (B)

(1) *Consent value*:

	Cost of building, erection costs and consent value of land	= £621	
	Estimated rental value @ 11%	= £69	p.a.
Deduct:	Amortisation of building costs:—		
	£441 / Y.P. for 10 years @ 11% + 2½% = £441 / 5	= £88	p.a.
		− £19	p.a.
	Y.P. 10 years @ 11% + 2½%	5	
		− £95	
	Reversion to refusal value £18		
	Present value of £1 in 10 years @ 5½% ... ... .59	£11	
		− £84	
(2)	*Refusal value*:	£18	
		− £66	

It will therefore be seen that by adopting this method as opposed to method (a) there will be no development charge payable for the first period of 10 years. Let us assume, however, that at the end of this period, a further term of 10 years is granted.

SECOND 10 YEARS

(1)	*Consent value*:		
	Estimated rental value (as before)	£69	p.a.
	Y.P. 10 years @ 11% + 2½%	5	
		£345	
	Reversion to refusal value (as before)	£11	
		£356	
(2)	*Refusal value* (as before)	£18	
	Development charge	£338	

Example 4

A single-storied factory has a total floor space of 5,000 feet and a cubic capacity of 100,000 cubic feet, the whole of which is contained on land extending to approximately three acres. An informal application has been made to the local planning authority as to the possibility of obtaining planning permission for extending the factory to provide a further 2,000 f.s. of floor space. It is estimated that this extension will increase

the value of the property by sixpence per foot super. The factory as it stands, disregarding the surplus land, would sell readily in the open market for £15,000. The local planning authority have now indicated that, subject to a formal application, permission would be granted for a period of 20 years. It is assumed that the value of salvage will offset the cost of demolition, etc., at the end of the term.

Valuation

Permitted tolerance 10% of $\frac{100{,}000}{20}$ = 500 f.s.

(1) *Consent Value*:			
Total floor space of factory and extension	= 7,000 f.s. at £3 0s. 6d.	=	£21,175
Annual rental equivalent at 6% say	= £1,270 per annum		
Y.P. 20 years at 6% and 2½%	10	=	£12,700
Reversion to estimated capital value	£15,000		
Present value of £1 in 20 years at 7%	.258		£3,870
			£16,570
Deduct:			
1. Cost of extension, 40,000 f.c. @ 2s. 6d.	= £5,000		
Fees and contingencies say	400		
2. Risks and profits 10% of £5,400	540		£5,940
			£10,630
Add: Surplus land, amenity value say			100
		Consent Value	£10,730
(2) *Refusal Value*:			
Existing factory	5,000 f.s.		
Add: Permitted tolerance ...	500		
	5,500 @ £3	£ = 16,500	
Deduct:			
1. Building costs:—(tolerance)	£		
10,000 f.c. @ 2s. 6d. ...	= 1,250		
Fees and contingencies ...	100		
Risks and profits say ...	130	1,480	
		15,020	
Add: Surplus land (as above) ...		100	£15,120
		Development charge	NIL

There should, therefore, be no development charge payable, as high building costs and a limited planning permission will normally tend to make building operations unremunerative. In this case, however, had planning permission been granted without reservation the operation would have attracted a development charge as in the following example.

Example 5

		£
(1) *Consent Value*:		
Capital value of factory and extension 7,000 f.s. at £3 0s. 6d.	=	21,175
Deduct:		
Cost of extension, fees, etc. (as above) ...		5,940
		15,235
Add: Surplus land (as above)		100
Consent value		15,335
(2) *Refusal Value.* (As before)		15,120
Development charge		£215

It may be argued that the element of speculation in carrying out work of this nature is nil, and that, therefore, no allowance should be made in the calculation. In my opinion, however, the developer merits a small margin of profit over and above the capital gain in premises.

The disadvantages attendant on a "break down" valuation is the fact that widely different results may arise under the same circumstances. For instance, in the example illustrated above, a variation in the percentage taken for risks and profits will result in a different estimate of the development charge. Where possible it will, therefore, be a more accurate approach to base the valuation on the land only as shown in the following example.

Example 6

The same circumstances as in Example 4 (*i.e.*, no limitation to the planning permission granted). It is estimated that the value of the land for industrial purposes is 3s. per foot super.

Valuation

	£	£
(1) *Consent Value*:		
Factory premises worth	15,000	
Add: Site extension 2,000 f.s. at 3s.	300	
Add: Surplus land amenity value say	100	
Consent value		15,400

(2) *Refusal Value*:

Factory premises (as before)	15,000	
Add: Tolerance 500 f.s. at 3s.	75	
Surplus land (as before)	100	
Refusal value		£15,175
Development charge		£225

Example 7

In the last 15 years what was a residential road has changed almost entirely to business uses, so that the majority of the houses are occupied as offices. The house in question is semi-detached with accommodation on three floors. As a private dwelling-house its market value is estimated at £2,000, and it is not anticipated that its value will fall by any appreciable extent. As offices it would command an exclusive rental of £175 per annum. Planning permission has been granted for a period of 10 years. Calculate the amount of the development charge.

Valuation

(1) *Consent Value*:

Office premises:

Estimated exclusive rental ...	£175 p.a.	
Less external repairs say ...	15	
Estimated net rent ...	£160	
Y.P. 10 years at 5½% and 2½%	6.9	= £1,104
Reversion to house worth say ...	£2,000	
Present value of £1 in 10 years at 6%	.558	= £1,116
		£2,220

(2) *Refusal Value*:

House worth	£2,000
Development charge	£220

Example 8

A motor mechanic rents a site of a bomb-destroyed house in a heavily "blitzed" area at a rental of 5s. 0d. per week. He intends erecting a temporary timber building as a workshop. The site measures 16ft. by 60ft. and planning permission has been granted for 15 years. He has insisted that the charge (if any) is to be assessed for the full term.

(1) *Consent Value*:

Rental value of site for proposed use ...	£13 per annum		
Y.P. 15 years at 12% and 2½%	5.7	=	£74
Reversion after 15 years to site for the re-erection of a dwelling-house:—			
Site: 16 ft. × 60 ft. = 960 f.s. at 2s. 6d.	£120		
Present value of £1 in 15 years @ 5½% ...	.45		54
			£128

(2) *Refusal Value*:

Site (as before) 960 f.s. at 2s. 6d. ...	£120	
Present value of £1 in 3 years @ 5½% ...	.85	102
Development charge		£26

The deferment of site value in the calculation for refusal value is to give some effect to the difficulties attendant on obtaining a building licence.

[*To be continued*]

Enforcement Proceedings: Appeals to Quarter Sessions

By Alan Garfitt, ll.b., Barrister-at-Law

At [1951] J.P.L. 641, the writer advised that those whose appeals against enforcement notices were successful before the justices at petty sessions should prevent the local authority from taking the matter on appeal to quarter sessions by refraining to ask for or refusing to accept any order for costs against the authority.

This advice was based on the decision in *R.* v. *Surrey Quarter Sessions, ex p. Lilley* [1951] 2 K.B. 749, in which, on similar provisions in another Act, it was held that the award of costs was the only factor which could, in the circumstances, make the local authority " a person aggrieved " and therefore entitled to appeal.

The recent decision in *R.* v. *Nottingham Quarter Sessions, ex p. Harlow* [1952] 1 T.L.R. 1546, does provide some food for reflection but does not, in the writer's opinion, affect the advice previously given.

The *Nottingham Case* has forged another link in the apparently endless chain of decisions concerning dustbins, the law concerning which has, perhaps fortunately, very little in common with that relating to Town and Country Planning. In the *Nottingham Case* a landlord was successful in his appeal to petty sessions and there was no order for costs, but the authority appealed successfully to quarter sessions. Their right to appeal was upheld because the success of the landlord meant that they themselves were bound by the provisions of the Public Health Act, 1936, to provide a dustbin themselves or take action to compel the occupier of the house to do so. Thus the rejection of the notice served upon the landlord cast a legal burden upon the local authority, who were thus brought within the definition of " aggrieved person " contained in *Ex p. Sidebotham* (1880) 14 Ch.D. 458.

It is clear, as was said by the court, that " aggrieved " must be interpreted separately for each statute in which it occurs. Contemplation of the Town and Country Planning Act, 1947, discloses no burden cast upon a local authority

whose decision upon development has been reversed. Once the magistrates have exercised their powers under s. 23 dispute is at an end so far as the planning authority are concerned; their duty of acting as watch-dog for the public has been fulfilled. There is no provision compelling further action. Frustration of the planners' hopes and expectations may annoy them but it does not make them aggrieved.

Development in Barsetshire

Development Charge in Retrospect

The following conversation may be assumed to have taken place between S., a surveyor and D.V., the district valuer, when they happen to meet upon a social occasion.

S. Hallo, D.V., I'm glad to see you here. Perhaps we can find a quiet corner and talk " shop " without the distraction of having a particular case to discuss.

D.V. Anything which I say will be, of course, " without prejudice."

S. Taken for granted, D.V.

D.V. Now that it is over four years since the Appointed Day it is interesting to look back at random on the various points that have cropped up and the way in which the Act has worked so far as development charge is concerned.

S. Yes, the first point that occurs to me is the violent dislike of the layman to having to pay, as he terms it, " to build on my own land."

D.V. Until the claims on the £300,000,000 have been met I suppose that is a natural reaction. Perhaps when the developers have received stock up to the prescribed percentage of their Part VI claim, they will realise that they have sold their development rights and take more kindly to buying them back.

S. Even then I think there will still be resentment. Apart from the fact that except in priority cases it is unlikely that payment will be in full (the Central Land Board seem to think that it will be 80 per cent. ([1952] J.P.L. 317)) the conception of paying development charge differs from the ordinary buying and selling of land, in cases where the developer already owns the land. If you were, prior to the Act, thinking of buying a bit of the land and the vendor asked too much you could always look for another piece where the owner might have more modest views as to the price. Now, if the D.V. asks what you consider to be too high a development charge for building on land with which you are already saddled there is nothing you can do about it in the absence of a right of appeal.

D.V. You could sell the land and buy another plot where the D.V. has more modest ideas as to development charge.

S. I don't think that would work. Nobody except builders owning "near-ripe" land is selling unbuilt-on land at existing use value.

D.V. Presumably you could sell your land at more than existing use value to pay for the new land.

S. Probably not because my land is saddled with an unduly high development charge. By the way, speaking of near-ripe land, I find much resentment amongst builders because, (a) the development charge is higher than the claim and (b) selling under Method B of House 1 they only get the existing use value of their land.

D.V. As to (a) that arises from two factors. First, the period which has elapsed since the Appointed Day, which affects the period of deferment and secondly, the general rise in prices in the last four years. For instance, I recently assessed a development charge on some builders' near-ripe land using a Consent Value of £4,400 which was calculated as follows:—

400 feet of frontage to made up roads at £11 a foot = £4,400
Deferment nil.

For the purpose of settling the Part VI Claim on the same land I agreed with the builders' surveyor an Unrestricted Value of £2,560, which was arrived at thus:

	£
Frontage to made up roads 400 feet at £8 =	3,200
Defer 4 years at 5 per cent. say	.8
Unrestricted Value	2,560
Restricted Value	160
	£2,400

I put the Refusal Value for development charge at £200 against the £160 Restricted Value, making a charge of £4,200 (£4,400 less £200).

S. So that this poor fellow has to pay £4,200 to build on some land which in effect you bought from him for £2,400 four years ago.

D.V. Yes, and I think justifiably so. At the Appointed Day no one would have contemplated that this land would be

built up in less than four years, and £8 a foot was then a fair price. Now, people are quite willing to pay £11 a foot or even more.

S. But consider the effect of this. The builder thinks he has done well in selling his land at £11 a foot on Method B, but you assess a development charge correspondingly and all he has got out of it is, in fact, £200.

D.V. Surely that is the intention of the Act—that land should change hands at existing use value.

S. It isn't much incentive to develop—I know builders who have refused to go on with the project when they have discovered how this scheme works out in practice.

D.V. I think they are looking for us—we shall have to adjourn this discussion, I fear.

S. A pity, there were so many other things I wanted to bring out, the delays—two months to get planning permission, another two months whilst the D.V. makes up his mind about the development charge—the niggling distinctions so finely drawn, but they will have to wait.

D.V. Come along, let us forget our troubles and join the festive throng.

Progress of Development Plans

(*Continued from p. 404, ante*)

Plans Submitted to the Minister

The following is a continuation of the list of plans submitted to date (July 21, 1952). Any objections should be sent to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before the closing date indicated.

92. Hampshire County Council.
Submitted to Minister: June 26, 1952.
(*London Gazette*, June 27, 1952.)
Closing date for objections: August 16, 1952.

93. Derby County Borough Council.
Submitted to Minister: June 20, 1952.
(*London Gazette*, June 24, 1952.)
Closing date for objections: August 30, 1952.

94. Barnsley County Borough Council.
Submitted to Minister: June 25, 1952.
(*London Gazette*, June 27, 1952.)
Closing date for objections: August 23, 1952.

95. North Riding of Yorkshire County Council.
Submitted to Minister: June 28, 1952.
(*London Gazette*, July 1, 1952.)
Closing date for objections: August 18, 1952.

96. Nottinghamshire County Council.
Submitted to Minister: June 27, 1952.
(*London Gazette*, July 1, 1952.)
Closing date for objections: September 1, 1952.

97. Bolton County Borough Council.
Submitted to Minister: June 26, 1952.
(*London Gazette*, July 11, 1952.)
Closing date for objections: September 1, 1952.

98. East Riding of Yorkshire County Council.
Submitted to Minister: June 27, 1952.
Closing date for objections : Not yet fixed.

99. Middlesex County Council.
Submitted to Minister: June 30, 1952.
(*London Gazette*, July 4, 11, 1952.)
Closing date for objections, August 31, 1952.

100. Cumberland County Council.
Submitted to Minister: June 30, 1952.
(*London Gazette*, July 4, 1952.)
Closing date for objections: September 1, 1952.

Dates of Local Inquiries

73. Northampton County Borough Council.
Local inquiry: September 16, 1952.

78. Isle of Wight County Council.
Local inquiry: September 15, 1952.

80. Wallasey County Borough Council.
Local inquiry: September 10, 1952.

Parliamentary Intelligence

Replies to Questions in the House of Commons

Accommodation of London Families in New Towns

In reply to Mr. H. Brooke the Minister of Housing and Local Government, Mr. Macmillan, said that he hoped shortly to send to London housing authorities a circular on the question of the action to be taken by a person living in London who wishes to move his family to a house in one of the New Towns. (June 17, 1952. H.C. Debates, Vol. 502, col. 984.)

Pennine Way and Thames Riverside Walk

In reply to Mr. P. Roberts and other members Mr. Macmillan said that he was inviting the National Parks Commission to submit to him a proposal for an additional path around the edge of Kinderscout, to provide an alternative route. (June 17, 1952. H.C. Debates, Vol. 502, col. 985.)

In a written answer to Mr. Chetwynd, the Parliamentary Secretary to the Ministry of Housing and Local Government, Mr. Marples, said that the local authorities concerned are now negotiating the new rights of way needed to complete the Pennine Way. The National Parks Commission were considering an estimate of the cost of repairing and completing the Thames riverside walk, but this would be an expensive undertaking, and the Commission may conclude that action must be deferred. (July 1, 1952. H.C. Debates, Vol. 503, col. 25.)

Bulletins of Selected Appeal Decisions

In reply to Mr. Walker-Smith Mr. Macmillan said that the cases reported in the bulletins described the areas in question so far as seemed necessary to the understanding of the decisions, and he did not think it would be useful to give the names and it might embarrass the parties. (June 17, 1952. H.C. Debates, Vol. 502, col. 987.)

Compulsory Purchases by Central Land Board

In a written reply to Mr. Poole the Minister said that the number of cases during the present year in which the Central

Land Board had purchased land compulsorily was four. (June 24, 1952. H.C. Debates, Vol. 502, col. *149*.)

Claims for loss of Development Value

In a written reply to Mr. Sparks the Chancellor of the Exchequer, Mr. Butler, said that the total value of the claims on the £300 million reported to the Central Land Board up to May 31, 1952, was just over £240 million. About 15 per cent. of the claims had then still to be reported, and there was no reason to modify the estimate already given of the final total. (June, 24, 1952. H.C. Debates, Vol. 502, col. *163*.)

Policy Regarding Green Belt

In a written answer to Mr. Russell, Mr. Macmillan said that proposals of local authorities as to inclusion of land in the Green Belt were being made in the development plans, and the question whether the proposals were adequate would be considered. He thought that building on land earmarked for the Green Belt should be allowed only in exceptional circumstances. (July 2, 1952. H.C. Debates, Vol. 503, col. *48*.)

Requisitioned Property

In reply to questions by Brigadier Medlicott the Minister of Housing and Local Government, Mr. Macmillan, said he had no power to increase the rental compensation payable under ss. 7 and 8 of the Requisitioned Land, etc., Act, 1948, in respect of property requisitioned by local authorities. A Working Party was examining the whole problem of hardship to owners of requisitioned property. (July 8, 1952. H.C. Debates, Vol. 503, col. 79.)

Development in New Towns

In a written answer to Mr. Lewis, Mr. Marples said that the figures for dwellings and factories at Harlow and Basildon on June 30, 1952, were :

Harlow

Dwellings : completed, 1,085; under construction, 980. Factories : completed, 10; under construction, 11. Workers engaged on housing and factories, 1,656.

Basildon

Dwellings : completed, 290; under construction, 356. Factories : completed, 1; under construction, 2. Workers engaged on housing and factories, 656. (July 8, 1952. H.C. Debates, Vol. 503, col. 77.)

Development Charges—Hardships

On the motion for the adjournment *Mr. Howard Johnson* drew attention to "the evils of development charges." He gave as instances (a) persons who were unable to claim the single plot owner's concession because they were joint owners; (b) the conversion of a hotel into flats which attracted a development charge of £10,000 reduced to £8,000; (c) the return of 39 private building licences because the licensees were unable to pay a development charge of between £250 and £400. He suggested (i) that the Minister should make regulations under ss. 12 (2) (*f*) and 69 (2) (*b*) of the Town and Country Planning Act, 1947, which would have the effect of exempting from development charge the building of a house for an owner-occupier where the prime cost of the house did not exceed £2,500.

Mr. Marples, the Parliamentary Secretary to the Ministry of Housing and Local Government, said that the Government accepted as a fact "that there are many hardships amounting to almost an injustice, in the levying of the development charge." Looking at the Town and Country Planning Act, 1947, in perspective and as a whole, it had been a valuable and necessary measure. It was easy to see where the Act is not working but extremely difficult to find a solution. No two professional bodies agreed as to the remedies to be applied. Both s. 12 (2) (*a*) and s. 69 (2) (*b*) had received consideration. The main burden of the public's complaint against development charge was under three heads: (1) it added to the cost of development because land could rarely be obtained at existing use value; (2) it was a tax on development; (3) the method of assessment appeared to be arbitrary. It was not realised that this was the result of variations in land values.

He could not say when an announcement as to legislation would be made but when it was made it would not be a half-baked scheme. It would obviously not be possible to introduce any measure before the next session. (July 4, 1952. H.C. Debates, Vol. 503, col. 863.)

Licensed Premises in New Towns Bill

This Bill was read a Second Time in the House of Commons and committed to a Committee of the whole House on February 27, 1952 (see *ante*, pp. 154, 225). On June 26, 1952, on the motion of the Home Secretary (Sir David Maxwell Fyfe), who explained that there was insufficient time

available for the Bill to be taken on the floor of the House, the Bill was, after debate, committed to a Standing Committee instead of to the Committee of the whole House. (H.C. Debates, Vol. 502, cols. 2667–2696.)

Town Development Bill

A debate on the Town Development Bill (see *ante*, pp. 152, 224) took place in the House of Lords on July 1, 1952. (H.L. Debates, Vol. 177, cols. 522–537.) The Bill was read a Second Time.

Crown Lessees (Protection of Sub-Tenants) Bill

This Private Member's Bill, which seeks to give the sub-tenant of a house or flat built on Crown Lands the same protection under the Rent Acts as would be available to him if the property was on ordinary land, was read a Second Time in the House of Lords on July 10, 1952. (H.L. Debates, Vol. 177, col. 999.)

Agricultural Land (Removal of Surface Soil) Bill

This Private Member's Bill, which seeks to provide an effective sanction against the stripping of top soil off agricultural land, was read a Second Time in the House of Lords on July 10, 1952. (H.L. Debates, Vol. 177, col. 1005.)

Lord Llewellyn explained that if enforcement action was taken under the Town and Country Planning Act, 1947, to prevent the stripping of top soil from agricultural land, a delay of several weeks resulted if the owner appealed to the Minister and the courts, during which time the stripping of the land could be continued. The Bill provides that a person who removes surface soil from agricultural land with a view to the sale of that soil shall be liable to penalties if the removal would constitute development under the Act of 1947.

National Parks

A debate on the administration of the National Parks took place in the House of Commons on July 8, 1952. (H.C. Debates, Vol. 503, col. 1271.)

Replies to Questions in the House of Lords

Preservation of Historic Houses

In reply to Lord Chorley, the Earl of Munster said that the Government appreciated the need for action to preserve houses of outstanding historic and architectural interest, but in present circumstances the financial resources which can be allocated for this purpose were very limited. (July 2, 1952. H.L. Debates, Vol. 177, col. 589.)

Statutory Instruments

Public Rights of Way (Applications to Quarter Sessions) Regulations, 1952

(S.I. 1952 No. 559)

Made - - - -	17*th March*, 1952
Laid before Parliament	19*th March*, 1952
Coming into Operation -	1*st April*, 1952

In pursuance of the powers conferred on me by subsection (2) of section thirty-one of the National Parks and Access to the Countryside Act, 1949,[1] I hereby make the following Regulations:—

1. An application under section thirty-one of the Act relating to any land shall be made—

(*a*) if the land is situated within a borough having a separate court of quarter sessions, to a quarter sessions held in and for that borough;

(*b*) if the land is not so situated as aforesaid, to the appeal committee appointed under subsection (1) of section seven of the Summary Jurisdiction (Appeals) Act, 1933,[2] of the court of quarter sessions having jurisdiction in the place where the land is situated,

and, subject to the provisions of these Regulations, subsections

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[1] 12, 13 & 14 Geo. 6. c. 97.
[2] 23 & 24 Geo. 5, c. 38.

(2) to (8) of the said section seven shall apply in relation to any such application as aforesaid as they apply to an appeal to which the said Act of 1933 applies.

2.—(1) Notice of any such application as aforesaid shall be given in writing to the clerk of the court and shall specify the land to which the application relates, the grounds upon which the application is made and the name of the surveying authority.

(2) The applicant shall, within the time allowed by subsection (1) of section thirty-one of the Act for the making of an application for a declaration under that subsection, serve a copy of such notice as aforesaid upon every other person appearing to the applicant to be the owner, lessee or occupier of the said land or of any other land specified in the application in regard to which the court may make a declaration, and upon the surveying authority.

3.—(1) Where such an application as aforesaid has been made under paragraph (*a*) of subsection (1) of section thirty-one of the Act, the surveying authority shall, if so directed by the court at any stage of the proceedings, forthwith serve upon every person appearing to them to be the owner, lessee or occupier of any land in regard to which a declaration under subsection (4) of the said section (that is to say, a declaration that there was at the relevant date a right of way to which Part IV of the Act applies over land other than land to which the application relates) may be made a copy of the notice of the application and a notice that it appears that the court may make such a declaration as aforesaid in regard to that land.

(2) Where such an application as aforesaid has been made under paragraph (*b*) or (*c*) of subsection (1) of the said section thirty-one, the surveying authority shall, if so directed by the court at any stage of the proceedings, forthwith serve upon every person appearing to them to be the owner, lessee or occupier of any land (other than land to which the application relates), which might be affected by a declaration made under subsection (5) of the said section (that is to say, a declaration as to the true nature of the rights conferred on the public by the public right of way in question or the true position or width of the part of the land over which the public right of way subsisted at the relevant date, being different both from that specified in the application and from that indicated in the provisional map and statement prepared by the surveying authority) a copy of the notice of the application

and a notice that it appears that the court may make such a declaration as aforesaid affecting that land.

4.—(1) Any document required to be served on any person under these Regulations shall be duly served if it is delivered to him, or left at his proper address, or sent by post to him at that address in a registered letter.

(2) Any such document as aforesaid required to be served on an incorporated company or body shall be duly served if given to or served on the secretary or clerk of the company or body.

(3) For the purposes of this Regulation and of section twenty-six of the Interpretation Act, 1889, the proper address of any person on whom any such document as aforesaid is required to be served shall, in the case of the secretary or clerk of an incorporated company or body, be that of the registered or principal office of the company or body, and in any other case be the last known address of the person in question.

5. To any such application as aforesaid the surveying authority shall appear as respondent, and any other person on whom a copy of the notice of any such application is required to be served under these Regulations may, if he thinks fit, appear as a respondent to the application.

6. The provisions of section five of the Quarter Sessions Act, 1849 [3] (which relates to the costs of appeals to quarter sessions), shall apply to any such application as aforesaid as if the application were an appeal to which that section applied:

Provided that in any case where there is more than one respondent to an application no order shall be made against the applicant for the payment of the costs of more than one of the respondents.

7.—(1) In these Regulations, the expression "the Act" means the National Parks and Access to the Countryside Act, 1949, and, in relation to any land as respects which an application is made for a declaration under section thirty-one of the Act—

"the applicant" means the person making the application to the court for the declaration;

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[3] 12 & 13 Vict. c. 45.

" the court " means the court to which under Regulation 1 of these Regulations the application is to be made;

" the surveying authority " means the surveying authority within the meaning of the Act for the area comprising the land.

(2) The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

8. These Regulations may be cited as the Public Rights of Way (Applications to Quarter Sessions) Regulations, 1952, and shall come into operation on the first day of April, 1952.

EXPLANATORY NOTE

(This Note is not part of the Regulations, but is intended to indicate their general purport.)

Under Part IV of the National Parks and Access to the Countryside Act, 1949, maps are required to be prepared by certain local authorities showing public footpaths and certain other public rights of way. Section thirty-one provides for the determination by quarter sessions of disputes relating to these maps. These Regulations prescribe the appropriate court of quarter sessions and require the hearing to be before the appeals committee or the recorder as the case may be. They also make provision as to the manner of application to the court, as to the service of notices upon persons concerned and as to the parties to the hearing.

Ministerial Information

Ministry of Housing and Local Government
Regional Offices and Welsh Office

The following up-to-date list is published for information :

	Address	*Tel. No.*
Region 1	Government Buildings, Kenton Bar, Newcastle-on-Tyne 3.	Newcastle 25121
Region 2		
Housing	Century House, South Parade, Leeds 1.	Leeds 32771
Planning	Government Buildings, Lawnswood, Leeds 6.	Leeds 74471
Region 3	Government Buildings, Chalfont Drive, Western Boulevard, Nottingham.	Nottingham 77711
Region 4	Brooklands Avenue, Cambridge.	Cambridge 58951
Region 6	Whiteknights Park, Reading, Berks.	Reading 61122
Region 7	19/21, Woodland Road, Bristol 8.	Bristol 26671
Region 9		
Housing	Cavendish House, Waterloo Street, Birmingham 2.	Central 8671
Planning & Estab.	5th Floor, Severn House, Suffolk Street, Birmingham 1.	Midland 6755
Region 10	Government Buildings, Warwick Road South, Old Trafford, Manchester 16.	Chorlton 6221
Region 12		
Housing	Government Buildings, Hawkenbury, Tunbridge Wells, Kent.	Tunbridge Wells 2780

	Address	*Tel. No.*
Welsh Office		
Housing	Cathays Park, Cardiff.	Cardiff 5120
Planning	66, Park Place, Cardiff.	Cardiff 8470/1
Research	Royal Chambers, Park Place, Cardiff.	Cardiff 8540

Ministry of Housing and Local Government Circulars

[*Continued from p.* 344, *ante*]

Circular No. 53/52, dated June 23, 1952. National Parks and Access to the Countryside Act, 1949.

Lands Tribunal Decisions[1]

Compensation for Compulsory Purchase

Smith v. East Elloe Rural District Council [2] (Ref. 7/1952, June 17, 1952). This was a claim for compensation for the compulsory purchase of four enclosures of arable and orchard land at Holbeach, Lincolnshire, with a house and outbuildings on one enclosure and a derelict barn and buildings on another. The total area was 8.613 acres. Notice to treat was served on December 14, 1948.

The Tribunal (Erskine Simes, Esq., Q.C. and Cecil H. Bailey, Esq., B.Sc., M.I.C.E., F.R.I.C.S.) accepted the District Valuer's figures of £1,680 for 8.053 acres and £150 for 0.367 acre of the land; and also £175 for the barn, based on the estimated rental value with deductions for rates, repairs and insurance, and for the notional lease under s. 52. The claimant's valuer's figure for the barn of £1,500, based on conversion to a dwelling-house could not be accepted having regard to s. 51 of the Act, and his alternative figure of £800 was not supported by detailed figures.

The dwelling-house was requisitioned at the date of notice to treat, and under s. 54 was to be valued having regard to its condition at the date of requisition. The Tribunal accepted the District Valuer's valuation of £1,010 for this property, being the capitalised estimated rental value with allowances for repairs, etc., cost of restoration, risks and contingencies, and the notional lease under s. 52, in preference to the claimant's figure of £2,100 (£2,500 less £400 for renovation).

The Tribunal determined the compensation to be the sum of these values, £3,015, less £59, the capital value of the tithe redemption annuity payable, plus £20 for cost of removing furniture, say, £3,000.

In view of the claimant's failure to deliver a notice stating the amount claimed in accordance with the statutory requirements, she was ordered to pay the acquiring authority's costs, on the High Court scale.

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[1] Full reports of these cases will be published in *Planning and Compensation Reports*.

[2] Appearances: Mr. A. E. Hamlin, Solicitor, for the claimant; *W. L. Roots*, instructed by Mossop and Bowser, Holbeach, for the acquiring authority.

Middleton v. Basildon Development Corporation [3] (Ref. 70/1951, June 18, 1952). This was a claim for compensation for the compulsory purchase of 0.158 acre of rough grazing land at Vange, Essex, having a frontage of 60ft. to an unmade road.

The Tribunal (J. P. C. DONE, ESQ., F.R.I.C.S.) referred to the claimant's mistaken view that he was entitled to the building value of the land, and stated that although it was possible that many private transactions had taken place at above existing use value, such transactions could not be accepted as evidence of value in determining the compensation for compulsory purchase, as they were paid on incorrect assumptions.

The compensation was determined to be £10, the claimant to pay five guineas costs to the acquiring authority.

Newman Eyre, Ltd. v. Edmonton Corporation [4] (Ref. 21/1951, July 2, 1952). This was a claim for compensation for the compulsory purchase of 16.94 acres of land at Cheshunt, partially developed by the construction of roads and laying of drains, and having the benefit of two section 80 dead ripe certificates in respect of the construction of certain roads and 200 houses. Notice to treat was dated January 8, 1949.

The claimants submitted a valuation amounting to £39,500, based on a price per foot frontage along the building line. The District Valuer's valuation totalled £17,500, based on a price per plot.

The Tribunal (J. P. C. DONE, ESQ., F.R.I.C.S.) said that either basis of valuation was satisfactory, but the building line method of the claimants' valuer would be adopted. His figure of £11 5s. per foot frontage was also accepted, having regard to the price paid on a sale of comparable land in 1946, and this resulted in a figure of £53,719.

It was necessary to modify this figure by an appropriate deferment in respect of current licence restrictions, and assuming a 6 per cent. investment and average deferrer of three years this reduced the basic figure to £45,125. The land was not agricultural land for the purposes of s. 52 of the Act, and the notional lease provisions applied, and an allowance of

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[3] Appearance: Mr. R. C. C. Boniface, Solicitor, for the acquiring authority.

[4] Counsel: *Eric Blain*, instructed by Pearce & Davis, for the claimant; *R. E. Megarry*, instructed by the Town Clerk, Edmonton, for the acquiring authority.

£1,000 must be made, this being the consideration which the notional lessee would require for yielding up possession.

It was also necessary to take into account the expenditure which would be incurred by the vendor on completing roads to the standard assumed in the basic valuation, and this was assessed at £10,821, plus a figure of 7½ per cent. to cover contingencies, costs and profit.

Allowing for these factors, the compensation was assessed at £32,500.

Claims for Loss of Development Value

Wilkinson and Robinson v. Central Land Board (Ref. CLB/782/1951, June 25, 1952). This was an appeal against a determination by the Central Land Board that there was no development value in a plot of land with a bungalow, fronting on two unmade roads with potential liability for road charges estimated at £410, at Laindon, Essex.

The appellants claimed that the development value was £70 (unrestricted value, £720; restricted value, £650) based on the possibility of erecting another bungalow on the southern part of the land.

The Tribunal (CECIL H. BAILEY, ESQ., B.SC., M.I.C.E., F.R.I.C.S.) emphasised that the claim was in respect of the land as a whole, and accordingly rejected as irrelevant a contention that by selling off the southern part the remainder would be relieved from the major part of the liability for road charges.

If the southern part were sold and a bungalow erected on it, the value of the existing bungalow would be diminished, and this depreciation would be at least as much as the amount claimed as development value.

Appeal dismissed, with three guineas costs.

Correspondence

To The Managing Editor,
Journal of Planning Law.

Sir,

Hanily v. Minister of Local Government and Planning and Central Land Board

Your report of this case appears on p. 345 of the June issue and it is the purpose of this letter to call attention to the words "*who without her knowledge had applied for planning permission to use the land for industrial purposes and received such permission in December, 1949*" which appear in the first sentence of the second paragraph of that report.

It would be interesting to know whether your readers are of opinion that the position is one which requires amendment. It seems to me entirely inconsistent with English conceptions of justice that someone should be able, without my consent or even without my knowledge, to apply for a planning permission in respect of the use of my land. And it seems to me equally inconsistent with those principles that any planning authority should, or should in law be able to, come to a conclusion on the request for the planning permission without any reference of the matter to the owner and/or occupier of the land.

Yours faithfully,

G. P. Wilson.

Wombourne,
Wolverhampton.

*Notes of Planning Decisions**

Erection of Rectory Adjoining Churchyard

The following is an extract from the letter of the Minister of Housing and Local Government dated April 9, 1952, following an appeal against the refusal of the Hertford Rural District Council to permit the erection of a rectory on a site adjoining the churchyard at Datchworth.

"The Minister agrees with the Council that it would be a pity to use the site under appeal since its development would spoil the fine view of the church. He appreciates, of course, that the rectory must be close to the church, and if the site under appeal had been the only one available the Minister, in these circumstances, would have given consent. But since other and equally suitable sites appear to be available he has decided to dismiss your appeal and this letter is issued as his formal decision.

"He suggests that you should now discuss the possibility of using one of these alternative sites with the local authority who have expressed their willingness to assist in every way."

[By courtesy of the County Planning Officer, Hertfordshire County Council.]

Continued Use of Land as Caravan Site

The following is an extract from the letter of the Minister of Housing and Local Government dated May 29, 1952, dismissing an appeal against the refusal of Cambridgeshire County Council to permit the continued use of land on the north side of the Cambridge–Newmarket road, Stow-cum-Quy, for the parking of caravans.

"The Council refused permission on the grounds that the proposed development would be harmful to the amenities of the area; that the site was not screened from the road and that there would be an increased use of the access. It was stated that applications for caravans to be used for semi-permanent residential purposes were favourably considered

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* The Managing Editor desires to express his thanks to those who have been kind enough to send to this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

provided that they were not sited on main or trunk roads and that they were screened as much as possible.

"The Minister agrees with the Council's reasons for refusing permission; in particular, after consulting with the Minister of Transport, he is satisfied that vehicles turning in and out of the site or parking on the highway would endanger the safety of through traffic on the trunk road."

[By courtesy of the County Planning Officer, County of Cambridge.]

Storage of Builder's Plant and Materials in Garden of House

The Minister of Housing and Local Government has conditionally allowed an appeal against the refusal of Bexley Borough Council to permit the continued storage of builder's plant and materials at 37 Merlin Road, Welling.

The Council considered the storage of these materials should not be allowed in the garden of a house and that it would be likely seriously to injure the residential amenities of the neighbourhood.

The Minister agrees that such a site is not ideal for this purpose, but he notes that it has been used for the storage of builder's materials since 1934 without complaint. In these circumstances he thinks it would be unreasonable not to allow the site to continue to be used for storage.

He therefore permits its continued use for storage provided that no part of the curtilage within 25 feet of Merlin Road shall be used for that purpose, and that a wall or close-boarded fence, not less than six feet high, shall be put round that part of the site which is used for storage purposes.

[By courtesy of the Public Relations Officer, Kent County Council.]

Working of Coal—Rights of Support of Surface Owners

A letter of the Minister of Housing and Local Government giving his decision on an application by the National Coal Board for planning permission to work coal in the Trent Valley is printed at p. 444, *ante*, as an appendix to an article on the questions involved in the decision.

Book Reviews

Rating Valuation Practice. By Philip R. Bean, F.R.I.C.S., and Arthur Lockwood, M.B.E., F.R.I.C.S. Third edition. Stevens & Sons, Ltd. 1952. 357 and (index) 8 pp. 35s.

This, the third edition of Bean & Lockwood's *Rating Valuation Practice*, follows the same general arrangement as the second edition published in 1950. At that time, however, whilst the Local Government Act, 1948, had come into operation, and its provisions were adequately dealt with, there had been insufficient time for the general practice and case law to work out.

The new edition remedies this, bringing in references to the leading rating cases up to the end of 1951 including, for example, *Cockram* v. *Tropical Preservation Co.* 1951 (derating) *British Portland Cement Manufacturers, Ltd.* v. *Thurrock U. D. C.* (rateability of plant and machinery) and *Woodward, V. O.* v. *Brading & Blundell, Ltd.*, 1951 (rateability of contractors' huts). Unfortunately several important cases have been heard, presumably, since the book went to press, particularly the *Sandown Park Case* with regard to a racecourse.

As before, the book begins with the basic principles of the basis of assessment and liability for rates, exemptions from rating, the preparation and amendment of valuation lists, and then goes on to deal with the theory and practice of the valuation of various types of hereditaments, including residential property, shops, industrial and freight transport hereditaments, public utility undertakings and so on.

The book is recommended by several of the professional institutions as a textbook for their examinees, and unlike many textbooks, some of which provide rather heavy fare, this work is eminently readable. The cross-headings to the numbered paragraphs break the subject matter up into logical subdivisions and the reader is not overwhelmed by an apparently unending forest of type. A further useful feature is the incorporation of many of the relevant statutory provisions in the body of the work immediately following the subject; in particular the incorporation of the Plant and Machinery Order (commonly called "the washing list") in the chapter dealing with the rating of plant and machinery. This arrangement, ideal for the student, is also very useful for the practitioner looking up some particular point, and in the writer's view, far preferable to the usual method of relegating all the statutory matter to an appendix at the end of the book, or even worse, to a separate volume.

In the present work there are also appendices, containing Parts III and IV of the Local Government Act and certain statutory instruments, and the statement to be used in estimating 1938 cost of dwelling-houses.

By way of criticism, some of the statements as to prices and values used in practice are rather sweeping and would, it is submitted, have been better rather qualified; for instance, dealing with sand and gravel pits (p. 171), "Royalties actually taken today are from 5d. to 10d. per cubic yard of saleable material."

W. F. Oliver.

The Law Relating to the Architect. By E. J. Rimmer, Q.C., B.SC., M.ENG., A.M.I.C.E., with a chapter on the *Registration and Professional Conduct of the Architect* by Pembroke Wicks, C.B.E., LL.B., of the Middle Temple, Barrister-at-Law. (Stevens & Sons, Ltd. 238 pp. 35s.)

The extraordinary changes effected during recent years by statute and statutory order in the law which affects those concerned with building and operations has rendered the task of the architect far more complex than it used to be. In these circumstances a book which deals with the responsibility of the architect in relation to the design and construction of works and his legal responsibility in relation to surveys of land or buildings will form a welcome addition to his library. And it is the sort of book which can best be produced by one who is not merely a lawyer, but who in his early days had practical experience in the solution of many quasi-legal problems which often beset the architect. The book before us comes from the pen of one who has the double qualification. Having dealt in general terms with the status, appointment and authority of the architect, he dwells (in Chapter II) upon the troublesome question of his legal responsibility. And it is here made manifest that recent legislation has rendered it necessary for the architect to make himself familiar with a number of statutes and by-laws which affect those who build or want to build. We note that in the opinion of Mr. Rimmer, the architect is normally responsible for obtaining all necessary approvals and consents which he knows, or ought to have known, will be required.

The care which the author has taken to make a complete statement of the existing law of negligence so far as it concerns the architect is shown by the fact that he quotes authorities which are only to be found noted in the *Estates Gazette,* or in volumes of reports published north of the Tweed. Again, when dealing with the troublesome question which arises when the architect is suing as on a *quantum meruit* for his services—there having been no express agreement—the author has been at pains to discover and publish an unreported judgment of Mr. (now Lord Justice) Birkett, an extract from which is printed in one of the appendices.

In Chapter VI *sub tit.* "The Architect as an Arbitrator" (and in appendix 6, *sub tit.* "Arbitration Proceedings") will be found a most useful guide to the "layman" who has to play the part of "judge." One who is called upon to act as arbitrator will find that chapter and appendix well worth careful study. In particular, the passage which appears under the heading "Costs of the reference" is of enormous value. Unless great care is taken to make a "judicial" order as to costs, one or other of the parties to a reference may be the victim of serious injustice. So much so, that the careful arbitrator will often consult his lawyer on the matter before making his award.

A valuable chapter on "Registration and the professional conduct of the Architect," by Mr. Pembroke Wicks, completes the text of the work. The Code of Professional Conduct, the Scale of Fees, or conditions for architectural competitions will be found in the appendix. There is a useful and exhaustive index.

WILLIAM VALENTINE BALL.

Practical Points

All questions for consideration should be addressed to "The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of the replies.

380. *Development—conversion of garage to bedroom*

Can you please inform us whether the conversion of a garage into a bedroom, not affecting the exterior appearance of the building, constitutes development and involves the need for planning permission? We would also like to know whether any development charge arises. [C. C. & C.]

ANSWER

I presume the garage is a "built-in" one forming part of a dwelling-house. If so, it may be converted into a bedroom without involving development (s. 12 (2) (*a*), it being stated by the question that the exterior appearance of the building will not be affected). Therefore permission will not be necessary and no development charge payable. [W. A. L.]

381. *Land of charities—development charge*

We are acting for the trustees of an ecclesiastical trust who are the owners of a piece of land abutting on a highway and adjoining a church.

The Minister has made a direction in respect of this land giving it the status of functional charitable land exempt from development charge.

It is proposed at some future date to use part of the said land for a youth centre in connection with the church, and for an addition to the churchyard, but a proposal has now been made to lease part of the land for the erection of a dwelling-house.

The direction of the Minister states that the provisions of subss. (2) to (4) of s. 85 of the Town and Country Planning Act, 1947, shall have effect in relation to the land so long as

the interest therein is held on charitable trusts or for ecclesiastical or other charitable purposes.

In our opinion the granting of a lease of part of the land will not deprive the trust of its interest in the land as it will still retain an interest on reversion, but before proceeding further with the granting of the proposed lease we should be much obliged if you would let us have your opinion as to whether our view is the correct one. [D. L. & W.]

ANSWER

I agree with the view expressed; the lessee erecting the house or carrying out other development will, of course, be liable to pay development charge. [J. F. G.]

382. *Mineral workings—Mineral Development Charge Set-off Regulations*, 1951

A client of ours has a substantial claim for loss of development value in respect of dormant minerals. He does not intend to work them. Under reg. 12 of the Set-off Regulations, 1951, he may apply to contract out of these regulations. Under regs. 9 and 13 he then becomes entitled to be paid in respect of the loss of the development value subject to the deductions mentioned in reg. 13. Under clause (1) (*d*) of that regulation, one of the deductions is the sum equal to any development charge which would be set off if planning permission were granted for all development therein specified.

In the normal way the granting of planning permission would not *ipso facto* result in development charge becoming payable. Development charge, of course, only becomes payable when development actually is contemplated and before the Board can make an order under reg. 12 (1) they must be satisfied that the applicant does not propose or is unable to work the minerals. Such an interpretation would, however, appear to render regulation 13 (1) (*d*) of no effect whatever.

A further complication is caused by the fact that recently (and after the appointed day, July 1, 1948) our client sold part of his land, adjoining a neighbouring brickworks, to the brickworks, who propose to develop it by excavating the clay there.

The loss of development value in respect of our client's interest in the whole has been provisionally agreed with the District Valuer, but not determined by the Central Land Board.

Your opinion is sought as to the proper interpretation of reg. 13 (1) (*d*) in this regard. In particular we should be grateful if you would give your views on whether any deduction can be made under this head from the sum due to our client for loss of development value if he obtains an order under reg. 12 and whether your opinion is in any way influenced by the sale to the brick company. The land comprised in the sale to the brick company formed part of the original unit of claim for which a form S.1 was submitted. [G.]

ANSWER

I thought at first that this question was easily answered because the inquirer refers to dormant minerals, and of course dormant minerals as understood by the Central Land Board (para. 1 (*b*) of the Supplement to Practice Notes, First Series, on development charges in respect of minerals) are all minerals except near ripe minerals. In other words they are minerals in respect of which a mineral undertaker had no interest on July 1, 1948. If, therefore, the questioner is using dormant minerals in the sense that the Central Land Board do he need not worry about the Set-off Regulations at all, since these apply only to minerals other than dormant ones.

On the assumption, however, that the questioner is using the word dormant in its ordinary sense and not in the particular way defined by the Central Land Board and that he was a mineral undertaker, the point which I think the correspondent has missed is that if the Central Land Board are satisfied under reg. 12 (1) that the applicant does not propose to work the minerals within the 20-year period, they may order that reg. 9 shall apply as if planning permission had been *refused* on such a date as may be specified for all development of minerals so specified. That being so, reg. 13 (1) (*d*) seems to mean that the payment is not reduced by the amount of development charge so far as it concerns (ii) development for which planning permission has been refused, and I think the notional refusal referred to in reg. 12 (1) is sufficient for this purpose.

With regard to the sale of the brick works, I think it would be as well to make the application for unworked minerals relate only to the land not sold assuming that the sale to the brick works has been at the full value. [W. F. O.]

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"Planning Law" Notes

We understand that the London County Council have decided to proceed with an appeal to the House of Lords in the " s. 78—works for the erection of a building " case (*Marks and Spencer, Ltd.* v. *London County Council and Central Land Board*), noted *ante*, p. 285.

A decision of the Minister in a planning appeal, where the Minister held that certain preparatory works were sufficient to satisfy the requirements of s. 78, is published at p. 526, *post*.

The decisions of the Lands Tribunal noted in this issue are a somewhat mixed bag. Of the claims for compensation for compulsory purchase one is under the Act of 1947, and two under the Act of 1944. Both of the 1944 Act cases are concerned not with the main valuation of the premises but with subsidiary valuations—in one, the amount of owner-occupier supplement in respect of war-damaged premises, and in the other the extent to which compensation is payable in respect of various expenses consequent upon removal to new premises —an important question which may equally arise under the Act of 1947 (see the *King* and *Mapstone Cases*, noted at [1951] J.P.L. 298–9, and the comments thereon at [1951] J.P.L. 451. There are also two decisions on claims for loss of development value, one of them, referred to below, being in the nature of a test case. And finally, a claim under the Land Drainage Act, 1930, for compensation for loss to a farm caused by drainage works carried out by the predecessors of a River Board.

A decision of the Lands Tribunal noted in this issue (*post*, p. 520) will be of importance in a number of other appeals by claimants for loss of development value which have not yet been heard by the Tribunal.

Where the Central Land Board issued a notice of statement of proposed development value which indicated that they proposed to determine the development value at a figure which would result in the claim being excluded under the

de minimis provisions of s. 63 of the Act, if the claimant then served notice of objection requiring the unit of claim to be amended, the Board have in suitable cases been prepared to amend the unit of claim and a valid claim, not excluded by s. 63, may thus have resulted.

But if the claimant did not then require the unit of claim to be amended and the Board have issued their formal notice of determination of development value, the opportunity for requiring the unit of claim, as distinct from the valuations, to be altered, has been lost, for the right of appeal to the Lands Tribunal is a right only to dispute the development value, as determined by the Board, of the area of land as specified in the claim form S.1 or as amended prior to the final determination by the Board.

The President of the Chartered Auctioneers' and Estate Agents' Institute (Mr. R. J. Whitton, O.B.E.) voiced a number of criticisms of the Act of 1947 during the course of his presidential address to the Institute. He said that further experience gained since the publication of the Institute's memorandum on the Act [1] in September, 1950, had more than ever convinced the Institute that the proposals they had there set out were right. There should be an end to development charge and no distribution of the £300 million—it should not be unduly difficult to adjust the cases where development charge has already been paid.

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[1] Published in full at [1950] J.P.L. 848.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the MANAGING EDITOR, *Journal of Planning Law*, 3 CHANCERY LANE, LONDON, W.C.2. *Every attempt will be made to return drafts or unsuitable copy, but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Existing Use Value and the Purchase of Land

By Desmond Heap, ll.m., l.m.t.p.i.,

Comptroller and Solicitor to the Corporation of the City of London

I. Enforcing Sales of Land at Existing Use Value

Under subs. (1) of s. 43 of the Town and Country Planning Act, 1947, the Central Land Board may (with the Minister's consent) acquire land by agreement, and under subss. (2) and (3) of s. 43 the Board may (by means of a compulsory purchase order made by them and confirmed by the Minister under the procedure of the Acquisition of Land (Authorisation Procedure) Act, 1946) acquire land compulsorily. But whether the Board, operating under s. 43 of the 1947 Act, are acquiring land by agreement or compulsorily, the *purposes* for which they are empowered by statute to acquire land are set out solely in subs. (1) of s. 43. These purposes fall into two categories namely:—

(i) "for any purpose connected with the performance of their functions under the following provisions of this Act" (*i.e.*, the Board's functions in connection with the assessment and collection of development charges under Part VII of the Act); and

(ii) "in particular . . . for the purpose of disposing of it [the land] for development for which [planning] permission has been granted under Part III of this Act."

The 1947 Act (as is well known) does not make it unlawful to sell land at a figure which is higher than its existing use value. Nevertheless, the object of the Act is to secure that land shall be freely transferred at its existing use value. The Explanatory Memorandum on the Town and Country Planning Bill, 1947 (Cmd. 7006) made this clear when it stated (para. 33) that "The effect of the development charge system will be that land bought for development will in future change hands at or about its value for existing use."

It is further relevant in this connection to quote from the letter date September 17, 1948, from the then Chairman of the

Central Land Board (Sir Malcolm Trustram Eve) to the then Minister of Town and Country Planning (the Rt. Hon. Lewis Silkin, M.P., now Lord Silkin) in which the Chairman, after pointing out that sales of land at more than existing use value were regularly taking place, stated:—

> "There is a very real risk in transactions of this type that one of two things may happen. The inflated price paid for the land will be added to the cost of the building and will be passed on to the person who is to occupy the building in a higher sale or letting price. Alternatively, developers will refuse to buy the land at such a price, and approved and urgent development will not be carried out."

The Chairman accordingly asked the Minister for his approval in principle to the use by the Board of its purchasing powers under s. 43 of the Act.

The Minister replied to the chairman by letter dated September 21, 1948, and in his reply he declared:—

> "It is, I absolutely agree, vital to the operation of the Town and Country Planning Act that land should be bought and sold at existing use value. I myself know of cases where approved development has already been hindered by the price asked for the land, although planning permission had been granted. . . . I hope that the Board will exercise to the full extent necessary the powers conferred upon them by s. 43 of the Act. When the Bill was before Parliament it was expressly stated that these powers had been included for this very purpose."

After much discussion and some doubt as to whether all this line of argument would, in law, really hold water, the matter is now completely set at rest by the decision of the House of Lords in *Earl Fitzwilliam's Wentworth Estates Co.* v. *Minister of Housing and Local Government* [1952] A.C. 362; 2 P. & C.R. 385, in which it was held that under s. 43 (1) of the 1947 Act the acquisition of land by the Board for the particular purpose of disposing of it for development to a person having planning permission for such development was "a purpose connected with the performance of [the Board's] functions under the following provisions of this Act," *i.e.*, under the provisions relating to the assessment and collection of development charges under Part VII of the Act. As the Report of the Central Land Board for the financial year 1951–52 (dated June 20, 1952, and presented to Parliament under s. 2 (7) of the 1947 Act) puts it in paragraph 31:—

> " This decision has established that the Board's powers of compulsory purchase can be used where necessary to discourage sales of land for development at prices above existing use value, since the purchase of land with a view to disposing of it for development for which planning permission has been granted, at a price inclusive of development charge, is a purpose connected with the Board's functions of collecting development charge."

It is now clear that this power of the Board to acquire land compulsorily can be used not merely when development is *hindered* (to quote the verb used in the Minister's letter of September 21, 1948, referred to above) by the requisite land being taken off the market (as in *Travis* v. *Minister of Local Government and Planning* (1951) 2 P. & C.R. 121), but also where development, although not hindered or obstructed, is made most *costly* by reason of the fact that the landowner, although unwilling to sell to a developer who refuses to pay more than existing use value, is fully prepared to sell to another developer who will pay more than existing use value (as in *Hanily* v. *Minister of Housing and Local Government* (1952) 3 P. & C.R. 6), with the result, presumably, that, in the case of land acquired for sale or letting after development, " the inflated price paid for the land " (to quote from Sir Malcolm Trustram Eve's letter mentioned above) " will be added to the cost of the building and will be passed on to the person who is to occupy the building in a higher sale or letting price."

II. As to the Time of Obtaining the Indispensable Grant of Planning Permission

The " big stick " powers of the Central Land Board under s. 43 of the 1947 Act are now much clarified and, after judicial investigation, have been found to be wider than some had submitted. In considering whether it is open to the Board to exercise these powers in any given case it may be remembered that although the Board can only dispose of land acquired under s. 43 to a person who has planning permission for its development, the appropriate planning permission need not already have been obtained prior to the making by the Board, or even the confirmation by the Minister, of the relevant compulsory purchase order. This is established in *Travis's Case* (*supra*), in which it was held that, on the assumption that the words " may so acquire any land for the purpose of disposing of it for development for which

[planning] permission has been granted," used in s. 43 (1) of the 1947 Act required the permission already to have been obtained at the date of the acquisition of the land by the Board, acquisition here meant not the making or confirmation of the compulsory purchase order (which was only a means to an end) but the actual acquisition of the land under the authority of the compulsory purchase order, and in pursuance of notice to treat, and all other steps customarily associated with the matter of compulsory purchase. This decision was followed more recently in *Hanily's Case* (*supra*).

III. As to Who may Apply for the Grant of Planning Permission

In considering, in connection with the Board's powers, this vital need for someone to obtain planning permission for development prior to the land being acquired by the Board, it may also be remembered that an application for planning permission can be made by any person having, or genuinely hoping to acquire, an interest in the land which will be affected by the permission if it is granted (*vide Hanily's Case*, *supra*). The application need not be made by the landowner himself nor by a prospective purchaser applying with the owner's consent (*ibid.*).

The Town and Country Planning Act, 1947, like the earlier planning enactments which it repealed, leaves very much at large the question of who may make an application for planning permission to develop land. It would appear too wide an assertion to say that it can be made by anybody at all including, for example, a building contractor who has no present or prospective legal interest in the land on which the development is to be carried out by him. This follows from *Ayles* v. *Romsey and Stockbridge Rural District Council* (1944) 108 J.P. 175, in which Vaisey J. said (at p. 176): "I am not prepared to hold that the applicant [for planning permission] within the meaning of s. 10 (3) of the Town and Country Planning Act, 1932, need necessarily have a present interest in the land. I am disposed to think that he must be a person who has either a present or a prospective interest in the land, and I find great difficulty in supposing that he can be a person whose interest may only be that, if leave to build on the land is obtained, he may be concerned in it as a contractor. . . . I should have thought that the real applicant in this case was not the plaintiff, who was the builder who prepared the plans, or the draughtsman who drew them, or the

person who took them round to the offices of the council, but either the then present owners of the land, . . . or, alternatively, the three persons whose names appear on the plans and who intended, if consent should be given, to develop the land by employing the plaintiff as their builder to construct bungalows upon it."

It follows from the decision in *Hanily's Case* (following, in this respect, *Ayles's Case*) that an application for planning permission may rightly be made without the owner of the affected land having the slightest knowledge of it. Moreover, the application having been so made, it may then be dealt with by the local planning authority without any notice being given to the landowner or any likely objectors (*vide Hanily's Case*, *supra*). Planning permission for the development of land can thus lawfully be obtained without the owner of the land being aware of the fact.

This is the subject of adverse comment in a letter to this *Journal* at p. 481. It may be stated, however, that this is a long established state of affairs and is certainly not new under the 1947 Act which (unlike its predecessors) makes provision for greater publicity being given to the planning decisions of local planning authorities by requiring, under s. 14 (5) (and *vide* also the Town and Country Planning General Development Order, 1950, art. 12), the keeping by a local planning authority of a register showing particulars of all applications for planning permission made to the authority and the manner in which they were dealt with by the authority. The register is open for public inspection.

Local planning authorities are not concerned with the title which an applicant for planning permission may, or may not, have to the land affected by the application. Their duty when considering the application is solely to determine whether from a planning point of view the proposed development ought to be allowed on the land in question, and if they agree that it should be allowed, and accordingly grant planning permission for the proposed development, clearly this does not of itself authorise the applicant to proceed with the development *if he is not otherwise authorised so to do*. Whether he is otherwise authorised will always depend on his title to the land and may further depend on such matters as restrictive covenants touching the land. The local planning authority, however, is not concerned with any of these things.

It is s. 43 and the new powers of compulsory purchase thereunder vested in the Central Land Board which has

doubtlessly provoked the adverse comment on the possibility of a valid planning permission being obtained "behind the back" (as it were) of the landowner affected by it. As Parker J. stated in *Hanily's Case* (at p. 9): "In my view there is no provision in Part III of the Act of 1947 which states expressly or even impliedly that the applicant [for planning permission] must be the owner or some person applying with the owner's consent. If one looks at the matter . . . before this difficult section—section 43—became part of the law, it was clearly to any owner's benefit and advantage that planning permission in respect of his land should be given, and it mattered not to him who obtained that permission."

IV. Number of Compulsory Purchase Orders made by the Central Land Board.

How far the Central Land Board will resort to the use of their newly clarified powers remains to be seen. According to their Report for 1951–52 (para. 30) they made 10 compulsory purchase orders in the financial year ended March 31, 1952 (of which eight were in England, one in Wales and one in Scotland), thus bringing the total number of compulsory purchase orders made by the Board since its creation to 35. This is not a large number having regard to the vast area covered by the Board's powers, but note may be taken of para. 32 of the Board's current Report in which it is stated: "The effect of the Board's powers is apparent from the fact that some owners have agreed as a result of the Board's intervention to sell their land direct to the Board's applicants, either at existing use value or at a price inclusive of development charge for which the owner takes responsibility." In short, it is not always necessary to use the big stick; merely to brandish it is sufficient on occasion!

V. Land for Housing—An Alternative to Compulsory Purchase by the Central Land Board

Notwithstanding their wide powers the Central Land Board evidently do not see why they alone should be responsible for getting sales and purchases going at existing use value, for in para. 27 of their Report for 1951–52 they draw attention (as they did in their Report for 1950–51) to the powers of local authorities under s. 73 of the Housing Act, 1936, to acquire land compulsorily for the purpose of sale or lease (under s. 79 of that Act) to private developers with a view to its development for housing and purposes incidental thereto.

Thus, if the successful applicant for planning permission to erect a house (or houses) cannot get the owner of the necessary land to sell it to him at what he, the applicant, thinks is the right figure, the applicant need not regard himself as necessarily driven into the arms of the Central Land Board under s. 43 of the Town and Country Planning Act, 1947, but (as the Board repeatedly urge) can call upon the appropriate local authority to come to his aid under ss. 73 and 79 of the Housing Act, 1936. On this, para. 27 of the Board's Report for 1951–52 says: "In their last Report (para. 34) the Board drew attention to the fact that local housing authorities have power to buy land and to resell it to private developers, either at existing use value or at a price inclusive of development charge. The Minister of Housing and Local Government has also, in a Circular dated November 27, 1951, stated that he will be prepared to consider applications for sanctions to loans for this purpose.

"It seems to the Board that this procedure goes a long way to meet the needs of those who have been given, or promised, licences to build. Last year they reported that at least four authorities had decided to adopt it. The Board have been informed that some 60 authorities in England and Wales, including some of the largest, have now done so, and that at least another 50 propose to do so. The Board are not aware that any local authority in Scotland has yet taken action on these lines."

Some Aspects of Development

By W. A. Leach, F.R.I.C.S.

"Development" is defined in s. 12 (2) of the Town and Country Planning Act, 1947, as "the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land." It will be seen from this definition that development lies in carrying out an operation or changing a use. If a building is erected, development lies in the act of erecting the building, not in the building itself or in its retention on the land; if the use of a dwelling-house is changed to use as offices, development lies in the act of

changing the use, not in the new use itself or in its continuance.

Under s. 23 (1) an enforcement notice may be served within four years of a contravening development being carried out. If the development is the erection of a house, it has been carried out when the house has been substantially completed, and it would be immaterial that some of the work was carried out more than four years before the service of the notice. It will not matter whether the erection of the house took six months or six years. Development will, however, have been carried out as soon as any part of the work of erecting a house has been carried out, *e.g.*, when the foundations have been laid, and an enforcement notice may be served within four years of that work being carried out. Every step in the work is development and part of a development, and each step prolongs the period for taking action as regards every earlier step. The contravention is the work as carried out at a date not more than four years before the service of notice, whether that work is the whole or part of the operation.

What constitutes the whole operation may sometimes be a matter of doubt. In the case of erecting a building, plans will normally have been prepared and there will be evidence of the scope of the operation undertaken. In the case of alterations it may be a question of common sense and intention as to how far works should be regarded as contributory to a single development.

In the case of mining operations the working may extend over many years. Such operations might, perhaps, be regarded as a succession of operations at successive points of time, but just as there is an increasing contravention when a building is erected without permission, so in the case of mining without permission there would be a mounting contravention until the last ounce of minerals had been extracted. On the first view enforcement action could only be taken in respect of works carried out during the preceding four years, whereas under the latter action could be taken in respect of the whole operation within four years of the completion thereof. Every extension of the area or depth worked is an extension of the original operation (the intended extent of the operation at its inception being a matter of evidence); but the operation is a continuous one, and if it lacks planning permission the working is one operation up to the date upon which action is taken (*cf.* Mineral Regulations, S.I. 1948, No. 1521, para. 3 (1), in which this view of a continuous operation is applied by making

mining operations subject to s. 23 (2) and (3) of the Act in the same way as uses). Intermittent stoppages of work would not destroy the unity of the operation, but it is, of course, possible that such a break in the working could occur as to mark the completion thereof, *e.g.*, the abandonment of the workings or the institution of a use of the unworked land incompatible with further mineral working. Later, fresh workings might be undertaken as a new operation.

A change of use does not occur piecemeal. Suppose that A occupies a dwelling-house. He then starts using one room as a light workroom, which may not in itself constitute a material change of use of the house. He then uses two more rooms as workrooms, the result of which is that the use ceases to be substantially that of a dwelling-house only, *i.e.*, development has occurred. It is the last change which has this result and the last change only which is development. Until then nothing had happened to which the Act could be applied: undo the last change and there is again no remaining contravention of the Act. Here, therefore, action must be taken within four years of the change of use which constituted development.

It is clear that planning control does not work through the right to retain works on land or to continue a use. These rights can only be negatived by challenging the development. The retention of works or continuance of a use, as the case may be, is legitimate, and it is only if the development is challenged that these rights may be brought to an end. Therefore, if an unauthorised development is not challenged within the time prescribed for such action, the retention of the works or continuance of the use will be as lawful as if allowed by a permanent unconditional planning permission.

Once a use has been properly instituted, or has lived beyond challenge, the right to continue it is unassailable (subject of course to the effect of limited period permissions). The premises may fall vacant but the right continues and the use may be actively resumed on re-occupation. Thus a use may be established by a short period of actual use followed by a period of vacancy, and if the planning authority has taken no action within four years of the commencement of the use, they may be in difficulty in contending that a new use has not been established and that during the period of its existence it was but a temporary stopgap use.

Development is something real. A permission for development is no more than an authority to develop and does not constitute development. It may be that it will never be

implemented. An actual operation or actual change of use is required.

There is, however, one possibility of a change of use being implied. Suppose that a dwelling-house is demolished and replaced by a building comprising a ground floor shop with offices over. Clearly the residential use has been abandoned, and there is an unequivocal adoption of the two new uses even before the new building becomes occupied. If there has been a planning permission for the new building, planning permission for the new uses is included in the permission for the erection of the building (s. 18 (3)), but if there is no permission for the building there would seem to be the double breach of control in its erection and in changing the use. If there have been internal works not subject to planning control adapting premises for a different use the facts may amount to an unequivocal abandonment of the old use and the adoption of a new use, which may be a matter of difficulty for the authority ignorant of the execution of the works.

As regards compulsory acquisition it is provided by rule (4) of s. 2 of the 1919 Act that any increase in the value of land due to a use thereof which could be restrained by any court or is contrary to law is to be disregarded. The expression " use " in this rule may have a wider meaning than in a planning context, but so far as planning is concerned, the question of restraint only falls to be considered in relation to uses as defined therein. The remedy for carrying out an unauthorised operation is, under s. 24 (1) of the 1947 Act, the removal of the development and there is only recourse to the courts to recover the costs incurred. Under s. 24 (3) a court of summary jurisdiction has the power to impose fines in respect of contravening uses if proceedings are instituted following non-compliance with an enforcement notice. A fine is a check by discouragement but not a restraint. Of recent history there was a man with a dog: for years he paid fines rather than obey an order of the court to have the dog destroyed. The court was powerless to enforce the order and so long as the fines imposed from time to time were paid could do no more than go on imposing them. So also where an offensive trade is established and carried on without permission; the only provision for dealing with the matter under s. 107 of the Public Health Act, 1936, is the imposition of a fine. Similarly, if a common lodging house is kept without being registered (s. 236).

If an unregistered nursing home is carried on the penalty

may be a fine or on a second offence, imprisonment (s. 187), but that may not stop the home being carried on. The Criminal Law Amendment Act, 1885, gets its way by putting into prison everybody who keeps, manages, or assists in the management of a brothel, and perhaps also the landlord, tenant, lessee or occupier. That may amount to restraint!

A material change of use can be challenged by means of an enforcement notice under s. 23 of the 1947 Act. If it is, and the notice is valid, the continuance of the use is an offence for which a fine may be inflicted on conviction; but there is no power to restrain or stop the use. Also, as the only offence, if no notice is served, is the commencement of the use, the continuance thereof in such a case is not contrary to law (*cf.* s. 107 of the 1936 Act where the offence is both to *establish* and *carry on* an offensive trade, s. 187 where the offence is to *carry on* an unregistered nursing home, and s. 236 when the offence is to *keep* an unregistered lodging house. "*Carry on*" and "*keep*" would run from the beginning of an unregistered use and so include the establishment of the use, but both terms might also become operative on lapse of registration). There is no registration or other matter under the 1947 Act the lapse of which would make the continuance of a use contrary to law (except the expiry of a limited period permission) when the continued existence of a building or the continuance of a use would seem to be contrary to law during the period available for enforcement action, the intention being, presumably, that omission to take such action is equivalent to tacit permission, the breach thereupon becoming regularised.

As regards the execution of works the offence lies in carrying out, not retaining the works (ss. 12 (2) and 23 (1)), and the works (in the sense of the product) are not contrary to law.

Therefore, rule (4) of the 1919 Act would seem to have no application to a development carried out without planning permission.

It follows from rule (2), however, that regard must be had to the effect of the planning contravention on the mind of a purchaser on a sale in the open market and such allowance must be made as would be likely to be made on such a sale, *i.e.*, the position seems to be the same as when the existing use on the appointed day (July 1, 1948) was unauthorised

[*continued on p.* 506

Public Local Inquiries Relating to Land

The Law Society and the Royal Institution of Chartered Surveyors have recently held a joint review of the administration of public local inquiries held by Ministers regarding proposals for the acquisition of land by public authorities, or which may lead to the compulsory acquisition of land, *e.g.*, the designation of the site of a New Town, and appeals against the decisions of local planning authorities regarding the use or development of land.

The observations of the two professional bodies have been published in a memorandum. The following is a summary of their recommendations:—

(a) that public inquiries should be held with reasonable promptitude and the Minister's decision given with the utmost speed;

(b) that, where the views of any Government Department are relevant factors in reaching a decision in connection with which the inquiry is held, those views should be made available to the parties in advance and should be open to discussion at the hearing, whether or not oral evidence is given at the hearing in support of those views;

(c) that the reports of inspectors (including their review of the evidence) should be published;

(d) that the Minister should always give reasons for any departure from recommendations made in inspectors' reports, except where the Minister certifies in any particular case that on security grounds it would be injurious to the public interest to do so; and

(e) that consideration should be given to the possibility of creating an independent inspectorate, under the Lord Chancellor, from which inspectors could be appointed by any Minister of the Crown to conduct a public inquiry.

Progress of Development Plans

(*Continued from p. 467, ante*)

Plans Submitted to the Minister

The following is a continuation of the list of plans submitted to date (August 18, 1952). Any objections should be sent to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before the closing date indicated.

101. Glamorgan County Council (Area No. 1).
Submitted to Minister: July 21, 1952.
(*London Gazette*, July 22, 1952.)
Closing date for objections: October 1, 1952.

102. Bristol County Borough Council.
Submitted to Minister: July 21, 1952.
(*London Gazette*, July 22, 1952.)
Closing date for objections: September 8, 1952.

103. Salop County Council.
Submitted to Minister: July 31, 1952.
(*London Gazette*, August 5, 1952.)
Closing date for objections: October 11, 1952.

104. Isles of Scilly County Council.
Submitted to Minister: July 28, 1952.

105. Southampton County Borough Council.
Submitted to Minister: July 31, 1952.
Closing date for objections: September 22, 1952.

106. Birmingham County Borough Council.
Submitted to Minister: July 31, 1952.
(*London Gazette*, August 8, 1952.)
Closing date for objections: January 31, 1953.

Dates of Local Inquiries

59. London County Council.
Local inquiry: September 29, 1952.

This inquiry will open at Central Hall, Westminster, but will be transferred to County Hall, S.E.1, on and after October 2. Over 5,000 objections have been lodged and in view of the wide scope of the inquiry the Minister has arranged for the objections to be classified in lists, which will be taken separately, probably borough by borough.

65. West Sussex County Council (Southern Section).
Local inquiry: October 28, 1952.

68. Manchester County Borough Council.
Local inquiry: October 7, 1952.[1]

76. Cheshire County Council (Part 2).
Local inquiry: November 18, 1952.

78. Isle of Wight County Council.
Local inquiry: September 25, 1952.[1]

79. Cambridgeshire County Council.
Local inquiry: October 14, 1952.

85. Kent County Council (Part A).
Local inquiry: Not before October 19, 1952.

There were 510 objections to this plan up to the closing date for objections, many of them relating to highway proposals, which are shown in the plan diagrammatically, and therefore do not indicate precisely which properties they will affect.

89. Southport County Borough Council.
Local inquiry: October 8, 1952.

Plans Approved by the Minister

The development plans of the following local authorities have now been approved by the Minister and have become operative as from the dates indicated. Any application to the High Court to question the validity of a plan or any provision therein must be made within six weeks from the date when notice of approval of the plan was first published.

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[1] Amended date.

8. Wigan County Borough Council.
Approved (with modifications): July 31, 1952.
Operative: August 8, 1952.
(*London Gazette*, August 8, 1952.)

Scotland

(*Continued from* [1951] J.P.L. 710)

The following is further information about development plans in Scotland. Objections should be addressed to the Secretary of State for Scotland at St. Andrew's House, Edinburgh 1.

S. 2. Inverness County Council.
Submitted to Secretary of State: July 28, 1952.[2]
(*Edinburgh Gazette*, August 15, 1952.)
Closing date for objections: September 30, 1952.

S. 6. Kirkcaldy Town Council.
Submitted to Secretary of State: August 12, 1952.
(*Edinburgh Gazette*, August 15, 1952.)
Closing date for objections: October 11, 1952.

[2] In substitution for the plan submitted on June 29, 1951.

Some Aspects of Development

(*continued from p.* 502)

and subject to enforcement procedure: *Higham* v. *Havant and Waterloo U. D. C.* (1951) 2 P. & C.R. 115, applied by the Lands Tribunal in *British Electricity Authority* v. *Cardiff Corporation* (1951) 2 P. & C.R. 189.

Breach of a condition of a permission as to use, whilst no more capable of being restrained than a contravening development, may be a continuing breach and contrary to law, during the whole period available for enforcement action, so that any value due to the breach should be disregarded during that period.

The remainder of rule (4) will apply or not irrespective of whether the use is a contravention of planning or other control.

Parliamentary Intelligence

Replies to Questions in the House of Commons

Demolition of Historic Buildings

In a written answer to Sir Edward Keeling, who asked how many of the investigators who are compiling lists of buildings of special architectural or historic interest have been dismissed since February, 1950, as a result of staff cuts; how many investigators are at present engaged in the work; and how many of them are employed on half time, Mr. Macmillan said that the answer to the first part of the question is eight full time and seven part time investigators. Fourteen full time and two part time investigators are at present engaged on the work, and the services of a few voluntary investigators are also available. (July 11, 1952, H.C. Debates, Vol. 503, col. *122*.)

In a written answer to Mr. Driberg, the Minister of Housing and Local Government (Mr. Macmillan) said that he did not know how many of the 32,000 buildings so far listed as of special architectural or historic interest under s. 30 of the Town and Country Planning Act, 1947, might be described as derelict. Information about those demolished is as follows:—

Known to have been demolished	7 (and part of one more)
Known to be in process of demolition ..	2
Intention to demolish known and not challenged—	
(a) but information not available whether demolition carried out	42
(b) but known to be still standing	6

(July 21, 1952, H.C. Debates, Vol. 504, col. *8*.)

Statutes

The following have now received the Royal Assent:

New Towns Act, 1952 (15 & 16 Geo. 6 & 1 Eliz. 2, c. 27).

Town Development Act, 1952 (15 & 16 Geo. 6 & 1 Eliz. 2, c. 54).

Central Land Board Practice

Report of the Central Land Board for 1951–1952 [1]

The annual report of the Central Land Board to the Minister of Housing and Local Government for the year ended March 31, 1952, has been presented to Parliament and published as a White Paper.[2]

The following points are taken from the report.

Claims on the £300 million fund

The valuation offices issued 370,427 statements of proposed development value during the year, bringing the total number to 758,395, which is about 93 per cent. of the number of statements to be issued. The Board issued 426,763 formal determinations, making the total 623,977. Of the formal determinations by the Board, 593,795—73 per cent. of the total number to be issued—had become final.

Notice of appeal had been given in 776 cases, making a total of 1,064. 817 had been disposed of after further negotiation, the Lands Tribunal had heard 20 cases, and 227 were outstanding.

Claims under s. 59

A sum of £803,157 was paid out in respect of claims by owners of interests in properties which qualified for value payments under the War Damage Act, 1943.

Development charges

The number of applications for determination of development charge was 70,830 received, 69,275 disposed of. The amount received in development charges was £3,875,522, in 17,960 cases. A total of £1,529,462 was set off against claims on the £300 million fund.

Statutory undertakers' operational land

The effect of s. 84 (3) of the Act, together with reg. 9 of the Town and Country Planning (General) Regulations, 1948, is that no development charge is payable on statutory

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[1] For the Report for 1950–1951, see [1951] J.P.L. 545.
[2] H.M.S.O., price 6d. net.

undertakers' land which ceases to be operational, in respect of the use of the land for " prevailing use " or the carrying out of any operations necessary for such use, provided the use is instituted or the operations carried out within five years of the land ceasing to be operational. The object of the subsection is to provide an exemption from charge, up to " prevailing use " value, for the whole of the first development on this type of land. It may happen, however, that in some large-scale projects the developers may for various reasons have difficulty in completing the operations within the five-year period. The Board have decided, with the approval of the Treasury, to regard as covered by the subsection any development which is substantially begun, although not completed, within the five-year period and which is carried out as a continuous process.

The market in land for housing

The Board state that they have always advised buyers not to pay building value for land if they will have to pay a development charge in addition. Many have disregarded this advice, presumably because they were prepared to pay an excessive price for a particular piece of land which they wanted urgently. But a few cases, increasing in number towards the end of the year, have come to the Board's notice of land being sold at its existing use value.

Most sales have taken place somewhere between existing use value and building value, or at building value. When it is at building value there is usually an assignment to the buyer of the seller's claim on the £300 million fund, which gives him an asset to set off against his development charge.

The Board again draw attention to the fact that local housing authorities have power to buy land and resell it to private developers, either at existing use value or at a price inclusive of development charge. Further, the Minister of Housing and Local Government has stated that he will be prepared to consider applications for loan sanction for this purpose.

Compulsory purchase

The Board made 10 compulsory purchase orders during the year, bringing the total to 35. There were also four purchases of land by agreement during the year, and some owners had agreed, as a result of the Board's intervention, to sell their land at existing use or a price inclusive of

development charge direct to persons who had applied to the Board.

Postponement of Development Charge for Agricultural Dwelling-houses [3]

(C.L.B. Circular No. 3/52, dated July 14, 1952)

1. The Central Land Board have announced that they are prepared on the following conditions to postpone the payment of development charge payable by a local authority in respect of the erection of houses which are to be reserved for members of the agricultural population.

2. The conditions are that—

(a) the houses in respect of which application under these arrangements is made are occupied and continue to be occupied by members of the agricultural population;

(b) the authority is receiving, and remains entitled to receive, Exchequer contributions payable in respect of such houses under s. 3 of the Housing (Financial and Miscellaneous Provisions) Act, 1946;

(c) the authority will from year to year make further application for the postponement of the charge accompanied by a certificate to the effect that the houses, or in the case of a housing estate the same number of houses, have continued to be occupied by members of the agricultural population for not less than 12 consecutive months during the 24 months immediately preceding the year in respect of which the annual application for postponement is made (periods when a house is void being treated for this purpose as occupation by members of the agricultural population);

(d) the local authority undertakes to pay on demand by the Board after the period of postponement has expired the development charge relating to any of the houses in respect of which the authority is unable or unwilling to give the annual certificate referred to in condition (c).

3. The definitions "agricultural population" and "agriculture" which the Board have adopted for the purpose of these arrangements are those in s. 115 (2) of the Housing Act, 1936. These definitions are as follows:—

"The expression 'agricultural population' means persons whose employment or latest employment is or was employment

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[3] The arrangements for exemption from development charge of houses for agricultural workers set out in Form D.1.B (Revised March, 1951) (see [1951] J.P.L. 290) do not apply to houses built by local housing authorities.

in agriculture or in an industry mainly dependent upon agriculture, and includes also the dependants of such persons as aforesaid; the expression 'agriculture' includes dairy-farming and poultry-farming and the use of land as grazing, meadow, or pasture land, or orchard or osier land, or woodland, or for market gardens or nursery grounds."

For the purposes of these arrangements the Board will treat as a housing estate any area of land which is developed by the erection of houses under cover of a single planning permission. If exceptionally a single planning permission relates to two or more areas of land which are not contiguous and which are developed independently of each other the Board will treat each such area as a separate housing estate.

4. Any local authority claiming the benefit under these arrangements in respect of any houses which the authority proposes to erect should at the time of applying to the Board on form D.1 for the determination of development charge in respect of the erection of such houses apply also to the Board in writing for the postponement of collection of the charge on the lines indicated in Appendix A, *post*. Thereafter the authority may apply annually to the Board for the further postponement of the payment of charge in the manner specified in Appendix B, *post*.

5. When the application for postponement of payment of development charge is in respect of some only of the houses being built on a housing estate, the amount of development charge which may be postponed under these arrangements will, as compared with the development charge payable in respect of all the houses, be proportionate to the number of houses in respect of which the application is made. The development charge, the payment of which is postponed, will thus relate only to the number of houses reserved for the occupation of members of the agricultural population and not to specific houses on the estate. When the annual certificate can be given only in respect of a smaller number of houses than in the immediately preceding year, the amount of the development charge which may be postponed will be proportionately reduced and the Board will require payment of the difference.

6. Where a local authority has already erected any houses after July 1, 1948, which in the opinion of the authority are entitled to the benefit of these arrangements and the collection of the charge has already been postponed by the Board, pending the making of these arrangements, on an

undertaking having been given by the authority that the charge would be paid if and when demanded by the Board, the authority should at once make an initial application for postponement of collection of the charge in the manner specified in Appendix A. If on examination the Board find that the case falls within these arrangements and the application is granted, the initial application should be followed in the normal way by the annual application and certificate. Only one application will be necessary in respect of the aggregate of individual houses specifically built for the occupation of agricultural workers. Where however some of the houses on any housing estate have been reserved for the occupation of agricultural workers a separate application must be made in respect of each housing estate.

7. The Board are also prepared to postpone the collection of development charge in respect of the erection of a house under s. 49 of the Agriculture Act, 1947, as part of the fixed equipment of a smallholding by a local authority which is a smallholdings authority. A smallholdings authority wishing to benefit by these arrangements should at the time of applying for the determination of development charge for the house in respect of which postponement of collection of charge is sought apply also to the Board's Regional Office in the form prescribed in Appendix C, *post*. If the application is granted by the Board the collection of development charge will be postponed in respect of the erection of such a house by a smallholdings authority so long as it continues to form part of the fixed equipment of the smallholding and is not sold by the authority or let otherwise than in accordance with the provisions of Part IV of the Agriculture Act, 1947.

APPENDIX A

TO: Regional Manager,
Central Land Board.

Dear Sir,

Initial application for the postponement of collection of development charge in respect of houses erected by a local authority and reserved for the occupation of members of the agricultural population

I am directed by my council to request the Central Land Board to postpone the collection of development charge assessed in respect of the erection of the houses specified in the schedule below for one year from the date of determination of the development charge payable.

The council will receive/are in receipt of annual Exchequer contributions in respect of each of these houses under s. 3 of the Housing

(Financial and Miscellaneous Provisions) Act, 1946, and undertake to secure that these houses [or an equivalent number of houses within the particular housing estate of the local authority] are occupied by members of the agricultural population.

The council undertake to pay the development charge upon demand by the Board after the expiration of one year from the date of the determination of the development charge, except in so far as an application for the further postponement of the payment of the whole or part of the charge, accompanied by a certificate in such form as the Board may from time to time require, shall have been previously received from my council and accepted by the Board.

Yours faithfully,

Clerk to the Authority.

SCHEDULE

APPENDIX B

TO: REGIONAL MANAGER,

CENTRAL LAND BOARD.

Dear Sir,

Annual application for postponement of collection of development charge in respect of houses reserved for the occupation of members of the agricultural population

I am directed by my Council to refer to their initial application to the Board to postpone the collection of development charge payable in respect of the houses specified in the schedule to this letter and to request that the collection of the development charge is postponed for one further year with effect from ..... in respect of the houses/the number of houses in respect of which the appended certificate is given.

Yours faithfully,

Clerk to the Authority.

SCHEDULE

CERTIFICATE

I certify on behalf of the ..... Council that (a) the council continue to be in receipt of Exchequer contributions under s. 3 of the Housing (Financial and Miscellaneous Provisions) Act, 1946, in respect of . . . out of/all the houses specified in the above schedule in respect of which the initial application for postponement of collection of charge was made, and (b) all the above-mentioned houses/a number of houses equivalent to the number of houses in respect of which the initial application was made have been occupied for at least 12 consecutive months during the 24 months immediately preceding the year in respect of which the application for further postponement of payment of development charge is made by members of the agricultural population.

Signature .....

Clerk of the ..... Council

Date .....

Note:—If all the houses or a smaller number of houses than that in respect of which the initial application was made have *not been occupied* during at least 12 consecutive months out of the 24 months immediately preceding the year in respect of which the application for further postponement of payment of development charge is made, the certificate should be modified to show the number of houses which have been so occupied.

APPENDIX C

TO: Regional Manager,
Central Land Board.

Dear Sir,

Application for postponement of collection of development charge in respect of a house erected by a smallholdings authority under s. 49 of the Agriculture Act, 1947

I am directed by my council to request the Central Land Board to postpone the collection of development charge assessed in respect of the house specified in the schedule below which is being erected by my council in exercise of their functions as a smallholdings authority under s. 49 of the Agriculture Act, 1947.

My council undertake to pay the development charge upon demand by the Board if at any time the house is sold by my council or let otherwise than in accordance with the provisions of Part IV of the Act.

Yours faithfully,

Clerk to the Authority.

Schedule

Notes of Cases [1]

Court of Appeal

Compulsory Purchase—Acquisition in Advance of Requirements

Palmer v. Minister of Housing and Local Government and Romford Corporation [2] (July 24, 1952). This was an appeal from the judgment of Parker J. (noted *ante*, p. 346) who had dismissed an application for the quashing of a compulsory purchase order made by the Romford Corporation and confirmed by the Minister of Housing and Local Government. The order was made under the Physical Training and Recreation Act, 1937, the purpose of the acquisition being to provide playing fields.

The appellants contended that the corporation had no power to acquire land in advance of requirements, and that it would be several years before the land was used as playing fields, the intention being to allow caravans to remain on part of the land in the meantime.

The Court (Singleton, Birkett and Morris LL.J.) said there was evidence of a great need for more playing fields in the Romford district, and the order was within the corporation's powers under s. 4 (1) of the Act of 1937. Time must be allowed for the land to be properly laid out, and the question was one of fact.

Appeal dismissed, with costs.

High Court: Chancery Division

Confirmation of Purchase Notice—Substitution of Another Authority

Ealing Corporation v. Minister of Housing and Local Government and Others [3] (July 28, 1952). In this case the

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[1] Full reports of these cases will be published in *Planning and Compensation Reports*.

[2] Counsel: *Harold Williams, Q.C.*, and *W. L. Roots*, instructed by Lees & Co., for the appellants; *J. P. Ashworth*, instructed by the Solicitor, Ministry of Housing and Local Government.

[3] Counsel: *G. R. Mitchison, Q.C.*, and *G. D. Squibb*, instructed by Field, Roscoe & Co., agents for the Town Clerk of Ealing, for the plaintiffs; *H. Christie, Q.C.*, and *Denys B. Buckley*, instructed by the Solicitor to the Ministry of Housing and Local Government; *Harold Williams, Q.C.*, and *W. B. Harris*, instructed by the Clerk of the Middlesex County Council; *D. P. Kerrigan*, instructed by T. F. Peacock, Fisher, Chavasse & O'Meara, for Messrs. Henry Boot & Sons, Ltd., the former owners.

Ealing Corporation sought a declaration that the purported confirmation of a purchase notice by the Minister of Housing and Local Government was void.

The owners of certain land at Ealing had served a purchase notice on the Ealing Corporation on November 30, 1950, following refusal of planning permission for the erection of flats. On March 13, 1951, the Minister notified the corporation, the owners and the Middlesex County Council that he intended to confirm the notice without modification. The county council wished to be heard before the notice was confirmed, and an informal meeting of representatives of the Ministry, the corporation and the county council took place, at which the future use of the site was discussed. By a letter to the County Council, dated May 21, 1951, the Minister then purported to confirm the notice, with the modification that the county council were substituted for the corporation as purchasers.

Upjohn J. referred to the provisions of subs. (5) of s. 19 of the Act of 1947, which require the Minister, before confirming a purchase notice or taking any other action in lieu thereof, to give notice of the proposed action to the person by whom the notice was served, the council on whom it was served, any other local authority proposed to be substituted for that council, and the local planning authority for the area in question, and to afford any such person or authority an opportunity to make representations if they so require within the period (not less than 28 days) specified in the notice.

He said that if the Minister proposed to substitute some other authority for the council on whom the notice had been served, he was required to give notice that he intended to exercise his powers under para. (*c*) of subs. (2), and it was necessary that the Minister's notice of his proposed action should state expressly or by necessary implication the name of the acquiring authority. In this case the Ealing Corporation were named as the prospective purchasers in the notifications in March, 1951, and the Minister could not change his proposed action without giving the parties an opportunity to exercise their rights under subs. (5).

The purported confirmation of the purchase notice was therefore *ultra vires* and void.

Judgment for the plaintiffs, with costs.

Lands Tribunal Decisions [1]

Compensation for Compulsory Purchase

A note of **Smith v. East Elloe Rural District Council** was included at p. 478, *ante*. We are informed by the claimant's solicitor that an action by the claimant against the acquiring authority is pending in the Queen's Bench Division of the High Court, and will probably be heard in the autumn. It was strongly represented to the Lands Tribunal and the acquiring authority that compensation should not be assessed before this case had been decided, and in view of the pending action the plaintiff's evidence was not fully given before the Tribunal.

Whettam v. Weymouth Corporation [2] (Ref. 5/1952. July 17, 1952). This was a claim for compensation for the compulsory purchase of 179.836 acres of land at Lodmoor, near Weymouth, Dorset. Notice to treat was dated October 5, 1949. The claimant's claim, as amended at the hearing, was for £20,160. The District Valuer's valuation amounted to £8,000.

The Tribunal (J. P. C. Done, Esq., F.R.I.C.S.) examined the various items in the claimant's valuation. The cost (£3,000) of construction of an embanked road, which provided access to the land acquired and to other land, was not allowed because the increased value resulting from this development would be reflected in the value of the land acquired and would be unaffected in the case of other land. In respect of 172 acres of low-lying land, some of which was subject to flooding, an amount of £11,500 was awarded, the sum claimed (£13,200) being reduced because considerable periodical expenditure on drainage would be necessary.

Sporting rights were valued at £450 (claim £830) and a nominal £50 allowed (claim £1,150) for car parking facilities on part of the land which had been brought to road level by tipping but which would not have been available for that purpose owing to planning restrictions. In respect of certain yards and wayleaves the District Valuer's figures amounting

[1] Full reports of these cases will be published in *Planning and Compensation Reports*.

[2] Appearances: *Raymond Stock*, instructed by Pengilly & Ridge, Weymouth, for the claimant; Mr. Percy Smallman, Town Clerk of Weymouth.

to £1,017 were accepted (claim £1,700). A claim (£330) for a kiosk and land was rejected since the use was not permissible. The value of a store yard, let to the Dorset County Council at £16 p.a., was put at £50 (claim £320), since the prospect of income from this source was very limited.

The total compensation was accordingly assessed at £12,750.

British and Colonial Furniture Co., Ltd. v. Southampton Corporation [3] (Ref. 66/1951. July 30, 1952). This was a claim for compensation on the compulsory purchase of freehold premises at Southampton. The value of the premises had been agreed and the question was solely as to the amount of the owner-occupier supplement under s. 58 of the Town and Country Planning Act, 1944.

Premises owned by the claimants were severely war damaged, and, pending their ultimate reconstruction, part of the ground floor was leased to another company from January 1, 1947, and the claimants remained in occupation of the remainder. A compulsory purchase order under the Act of 1944 was confirmed in May, 1947, and notice to treat was deemed to have been served on July 16, 1947.

The Tribunal (Erskine Simes, Esq., q.c., and J. P. C. Done, Esq., f.r.i.c.s.) did not accept the view of the parties that the material question was whether the claimants were owner-occupiers of the whole or of part of the building. The question was what sum was a reasonable supplement to the compensation under s. 57, having regard to the extent to which the claimants were affected by the purchase of their interest, and not exceeding the maximum set out in s. 58 (2), which was related to the value of the whole building comprised in the land acquired. Subss. (5) and (6) of s. 58 did not define the amount of the supplement but only the qualification for payment thereof.

The Tribunal held that the amount of the supplement was not necessarily related to the value of the part of the building occupied by the claimant, and they were entitled to take into consideration the whole of the circumstances of the occupation and not merely the facts as to physical occupation on the date of the notice to treat.

The compensation was assessed on this basis at £18,000, a figure agreed between the parties.

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[3] Counsel: *W. L. Roots*, instructed by Paisner & Co., for the claimants; *G. D. Squibb*, instructed by the Town Clerk, Southampton.

Easton v. Islington Corporation [4] (Ref. 73/1951. July 30, 1952). This was a claim for compensation under the Town and Country Planning Act, 1944, on the compulsory purchase of a restaurant and café (unlicensed) in York Way, Islington. The value of the site and buildings, the amount of owner-occupier supplement and the cost of removal to other premises which the acquiring authority had leased to the claimant, had been agreed. The claimant further claimed £9,516 9s. 3d. for (1) the cost of a new shop front (£200); (2) costs of plumbing, signwriting and electric lighting (£191 9s. 3d.); (3) increased rent and rates (£5,790); (4) increased cost of working at new premises (£1,335). The acquiring authority admitted claim (2), together with a sum of £275 13s. 2d. for loss on fixtures and fittings, to total £467 12s. 5d.[5]

The Tribunal (Erskine Simes, Esq., Q.C.) held that in respect of claim (1), for the present value of the new shop front as at the termination of the claimant's 21 years' lease (the claimant having, until then, the use of the shop front), there would be sufficient compensation if £500 were awarded for claims (1) and (2). With regard to (3) any additional expense by way of rent and rates was attributable to additional advantages possessed by the new premises, and was in any case in the nature of a claim for reinstatement which was not allowable since the Acquisition of Land, etc., Act, 1919. For disturbance to the business due to its removal, under claim (4), the Tribunal allowed £330.

Claims for Loss of Development Value

Vaughan and Others v. Central Land Board (Ref. CLB/808/1951. July 30, 1952). This was an appeal against a determination by the Central Land Board that there was no development value in 88·70 acres of farm land at Llanedeyrne, Glamorgan. Part of the land (22 acres) was rough pasture, the remainder good agricultural land.

It was agreed that the restricted value of the land was £7,500. The claimants submitted a valuation of £14,312 as the unrestricted value, based on the building of 650 houses.

[4] Counsel: *C. G. Armstrong Cowan*, instructed by Stocken, May, Sykes and Dearman, for the claimant; *G. D. Squibb*, instructed by the Town Clerk, Islington.

[5] There appears to be an error of 10s. in the figures stated in the Tribunal's decision.

The Tribunal (Sir Wm. Fitzgerald, q.c., and Cecil H. Bailey, Esq., b.sc., m.i.c.e., f.r.i.c.s.) held that the claimants' calculation of unrestricted value was open to criticism because (1) it took little or no account of the cost of construction of roads and sewers, (2) it made no provision for profit to the contractor, and (3) it provided for 150 houses to be built on the rough pasture land, which was unsuitable for building. Allowing for these items, there was no development value in the land.

Appeal dismissed, with 15 guineas costs.

Maddox v. Central Land Board (Ref. CLB/857/1952. July 30, 1952). This was an appeal against a determination by the Central Land Board that the development value of land at Woldingham, Surrey, was £350, being unrestricted value £6,400, restricted value £6,050.

The claim had been in respect of $1\frac{3}{4}$ acres of land, on which there was a private dwelling-house. In October, 1951, the Board had issued a notice of statement of proposed development value, stating the above figures as the proposed values and drawing attention to the fact that the development value would not exceed one-tenth of the restricted value and that the claim would therefore be excluded under s. 63 of the Act. The claimant completed a form agreeing with the development value proposed, and in December, 1951, the Board issued a notice of determination, stating the same figures.

In January, 1952, the appellant served a notice of appeal on the grounds that he had "inadvertently failed or omitted to reduce the area of land in my claim to omit land in which no development value exists" and claimed the unrestricted and restricted values "in respect of the reduced area of land" should be £400 and £50 respectively.

The Tribunal (Sir Wm. Fitzgerald, q.c., and Erskine Simes, Esq., q.c.) held that the powers of the Tribunal are limited to confirming or amending the values stated in the Board's determination, and do not extend to altering the unit of claim by reference to which those values have been determined. Further, that the development value which a claimant is given a right to dispute must be the development value of the unit of claim specified on form S.1 or as amended prior to the final determination of the Board.

Appeal dismissed. No order as to costs.

Compensation for Injury from Land Drainage Works

Robson v. Northumberland and Tyneside River Board [6] (Ref. 119/1950. July 30, 1952). This was a claim under s. 34 (3) of the Land Drainage Act, 1930, by the owner of a farm for loss suffered in consequence of drainage works carried out in a stream known as Newlands Burn which flowed into another stream, Waren Burn, about 600 yards above the claimant's farm, past which the Waren Burn flowed. There had always within memory been a weir just above the farm from which a mill race led water to the farm steadings, where the claimant had in 1920 installed two water turbines, one used for driving farm machinery and the other for generating electric current. Also dependent upon the water race and weir there was a small water wheel pumping drinking water to the house from a spring, a supply of drinking water for the animals led by gravity, and a hydraulic ram supplying water for other domestic purposes to the house.

A drainage scheme to relieve flooding higher up the Newlands Burn had been carried out in 1943, and this had involved removing the hard rock and gravel bottom of the burn. A large amount of silt had been carried down during the works, and had put out of action the two turbines and small water wheel and gravity feed for the animals. Some silt continued to come down since the work was completed.

In 1944 the owner (the present claimant) had claimed £20,005 as compensation. The Board had offered to reconstruct a sluice which controlled the water in the mill race at an estimated cost of £319 12s. if the owner would accept this in full settlement of all his claims.

The Tribunal (Erskine Simes, Esq., q.c., and Cecil H. Bailey, Esq., b.sc., m.i.c.e., f.r.i.c.s.) held that the claimant had been justified in rejecting this offer. The machinery had been rendered unworkable and there had been injury to the farm as a result of the work. It was probable that sooner or later the claimant would have resorted to the public electricity supply, but this had been forced upon him earlier than would otherwise have been necessary and before he was ready for it.

The compensation for the additional expenditure and inconvenience caused, with a contribution towards the cost of installing electric power from the public supply and a new water supply, was assessed at £2,500.

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[6] Appearances: *J. Harvey Robson*, instructed by Frank J. Lambert & Co., Gateshead; *J. Charlesworth*, instructed by N. H. Thomas, Clerk and Solicitor to the Northumberland and Tyneside River Board.

Correspondence

To the Managing Editor,

Journal of Planning Law.

Sir,

Development—Resumption of Former Use of House for Paying Guests

With reference to Practical Point No. 377,[1] I have read with interest the reply to this inquiry, this being a question which I, as Planning Assistant to a planning authority, have had arise on several occasions.

My interpretation of the position is, in this case, slightly different from that of "W. A. L." and is as follows: The use as a private dwelling-house could not be regarded as a temporary use unless there was clear evidence that this was the intention at the time the use was commenced. The mere fact that "there was always the prospect that the former use would be resumed" is surely not sufficient to constitute a temporary use, as this is frequently the case with uses which are commenced experimentally (with planning permission) and continued permanently if successful, or abandoned if unsuccessful, by means of planning permission for another change of use.

The question of whether there was a planning scheme at the time the use was commenced is surely irrelevant as under s. 75 (1), in the case of a use commenced before 1948, where a notice has not already been served (by July 1, 1951) no enforcement action can be taken. The use would, therefore, appear to be a "permitted use" by default and planning permission would surely be required to change to any other use.

Yours faithfully,

R. E. Linecar, A.I.A.S.

Brighton.

To the Managing Editor,

Journal of Planning Law.

Sir,

Valuations under the Act of 1947

With reference to Mr. Claude Bennett's article at [1952] J.P.L. 453, I agree that in Example 1 on p. 454 the ground rent should be valued for a term of years only, since when rebuilding is necessary permission may be refused. I do not agree, however, that the actual unexpired term of the lease must necessarily be taken, *e.g.*, if the lease had shortened to 60 years before building became possible, would Mr. Bennett substitute 60 years for 87 years? Also, there should be some

[1] *Ante*, p. 425.

reversionary value after the life of the buildings, even if the worst is assumed and the reversionary value is taken to be £144, which, deferred for the life of buildings, would, I agree, not amount to very much. It should, however, be noted even if put in at nil.

In Example 2 (and a similar point may be made in many of the Examples) a ground rent of £20 p.a. is valued for 20 years at 5½ per cent. and 2½ per cent. to give £212. Would anybody really pay down now £212 capital to receive £20 p.a. taxable, *i.e.*, £10 10s. per annum which over 20 years would return £210 or £2 less than the capital payment? This question arises even more pointedly in Example 8 where the value of £160 p.a. for 10 years is given as £1,104, which is capital payable cash down for the right to receive taxable income which would return £840 net over the 10 years. Far better to keep the £1,104 in the old stocking without interest than to invest it in this way.

In Example 2, how is the consent value ground rent of £20 p.a. arrived at? If the proper ground rent for a permanent building, as in Example 1, is £20 p.a. surely it cannot be £20 p.a. for a building which can only be used for 20 years (even allowing the possible saving by reason of lighter construction; otherwise why do people ever put up permanent buildings?).

Example 3 is curious. The information given is that the consent value is £180, from which one would presume that it has been calculated to be that figure; but in Method (B), a calculation is made showing that the consent value is—£84. Where did the £180 come from? Why should a valuer think of a number so completely unjustified on reasoned analysis of the value?

In this Example we have a reversion to refusal value, but something has been overlooked, for either (a) the temporary building would have to be cleared off the site (although we are told the planning permission forgot to provide for that), or (b) the kitchen garden would be cluttered up with a building which could only be used as kitchen garden!

Yours truly,

W. A. Leach.

Eastbourne.

To the Managing Editor,

Journal of Planning Law.

Sir,

Ownership of Real Property

We were most interested to read the letter written to you by Mr. G. P. Wilson [*ante*, p. 481]. Our opinion certainly concurs with Mr. Wilson's that the position at present obtaining is one which calls for amendment. Ever since the time of the decision in the *Fitzwilliam Case* considerable modification has had to be made in the views earlier held as to the tenure of legal estates.

A fissure was made in the rock supporting the edifice of the law of English real property by the passage of the Town and Country Planning Act of 1947. It can hardly be said, we suppose, that the *Fitzwilliam Case* was the *thin* end of a wedge, but it is at any rate

true to say that the *Hanily Case* is on a much thicker portion of the same wedge.

The only comfort in the position as we are able to see it is two-fold. First, no action can be taken by a person behind the back of a legal estate owner unless that owner has indicated that he desires to dispose of his property. Secondly, no application can be made to the Central Land Board for a determination of the value of real property except by a person who is desirous of *developing* the land in question.

It appears to us that it is now upon the narrow foundation of these two assertions that the law of English real property rests. Were it not for these two facts there would be nothing to prevent the position arising, as we apprehend the matter, of A applying to the Central Land Board for the determination of the value of B's property, whereupon A could immediately obtain a compulsory purchase order in the figure laid down by the Central Land Board.

The mind boggles at this conception to such an extent that we hope others of your correspondents may perhaps be able to show to us the fallacy in our train of thought.

Yours faithfully,

MULLINGS, ELLETT & Co.

Cirencester.

TO THE MANAGING EDITOR,

JOURNAL OF PLANNING LAW.

Sir,

Enforcement Proceedings—Appeals to Quarter Sessions

Mr. Alan Garfitt in his article on page 461 argues that a local planning authority cannot be "aggrieved" by an adverse decision of the magistrates' court because the Town and Country Planning Act, 1947, casts no burden on the authority whose decision has been reversed, and there is no provision compelling further action. This may be so in some cases, but in others the development in question may so seriously affect their planning proposals that the local authority may be obliged to make an order under s. 26 of the Act or to make a compulsory purchase order for the purpose of securing the use of the land in the manner proposed by the development plan. The Minister may indeed, under s. 100 of the Act, direct the local planning authority to take such action. The result, in either case, would be to impose a liability to pay compensation on the local planning authority for which they would not have been liable if the enforcement notice had been held to be effective. In these circumstances it is surely arguable that the local planning authority is "aggrieved" by an incorrect decision of the magistrates' court.

Yours faithfully,

A. T. BARRINGER,

Deputy Town Clerk.

Shrewsbury.

*Notes of Planning Decisions**

Erection of House on Nursery Land

The following is an extract from the letter of the Minister of Housing and Local Government dated April 7, 1952, allowing an appeal against the refusal of the St. Albans Rural District Council to permit the erection of a house on land forming part of a nursery at Lamb Lane, Redbourn.

"In your Council's view the use of a portion of the area of the nursery for residential purposes would involve the loss of agricultural land and would have a detrimental effect on its operations. On the other hand, the appellant has stated that the nursery could be better managed if he resided on the premises and that he depended almost entirely on the production from the glass houses which would not be affected by the development proposed.

"The Minister has come to the conclusion that the proposal cannot reasonably be held to prejudice the economic cultivation of the land as a nursery. He has therefore decided to allow the appeal and permit the erection of one house on the appeal site, subject to the condition that the design, layout and external appearance shall be agreed with the local planning authority, or failing agreement, as shall be determined by the Minister."

[By courtesy of the County Planning Officer, Hertfordshire County Council.]

Condition Involving only Minor Alterations to Design

The Minister of Housing and Local Government has allowed an appeal against a condition imposed by the Orpington Urban District Council in permitting the erection of a bungalow at Oaklands Lane, Biggin Hill.

The condition involved minor alterations to the design of the proposed bungalow. The Minister considers that it would have so little effect on the external appearance of the bungalow that it would be unreasonable to insist on the condition.

[By courtesy of the Public Relations Officer, Kent County Council.]

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* The Managing Editor desires to express his thanks to those who have been kind enough to send to this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

Works for the Erection of a Building—s. 78

The following is an extract from the letter of the Minister of Housing and Local Government dated July 4, 1952, following an appeal against the refusal of the Hendon Borough Council to permit the erection of lock-up garages and car storage on land at Church End, N.W.4.

"It was contended on behalf of the appellant that permission is deemed to have been granted for the development in question under Part III of the Act by virtue of s. 78. The grounds for this contention are that permission (subject to certain conditions, by which the appellant is prepared to abide) was given by your council on January 30, 1948, under the Hendon Planning Scheme No. 1 for the erection on the appeal site of single storey buildings to be used as lock-up garages; that following the grant of this permission, and before the appointed day under the Town and Country Planning Act, 1947, the appellant undertook certain works on the land, consisting of the levelling and fencing of the land, the digging of trial trenches to ascertain the nature of the foundations, and the formation of a carriageway across the site; that the works carried out on the appeal site constitute works for the erection of a building within the meaning of s. 78 of the Act and could have been completed before the appointed day in conformity with the permission granted under the planning scheme; and that permission required under the Restriction of Ribbon Development Act, 1935, has been given. Thus, it is claimed, the provisions of s. 78 of the Act of 1947 are satisfied and the development forming the subject of the present appeal being part of the development for which approval was given under the Planning Scheme in January, 1948, can be carried out, without further application for planning permission.

"It is noted that your Council did not dispute the appellant's argument above, except that they do not consider the works in question to be 'works for the erection of a building'.

"The Minister has carefully considered all the facts and representations before him, and in his opinion the works in question are such as to satisfy the provisions of s. 78. Accordingly, in his view, permission must be deemed to be granted under Part III of the Act for the completion of those works in accordance with the permission of January 30, 1948, and he determines accordingly."

[By courtesy of the Town Clerk, Hendon.]

Book Reviews

Coulson and Forbes on the Law of Waters and Land Drainage. By S. R. Hobday, O.B.E., Barrister-at-Law. 6th edition. (Sweet & Maxwell, Ltd. 1320 plus lx pp. £8 10s.)

This attractively produced new edition of a standard work covers all matters relating to waters (including the sea and coast protection, tidal and non-tidal watercourses, pollution, easements of water, ferries, bridges, canals, fisheries, etc.), and land drainage. It includes a useful section on docks and harbours, and an annotated print of the Land Drainage Act, 1930, the various Agriculture Acts dealing with land drainage, the River Boards Act, 1948, the Coast Protection Act, 1949, and the Rivers (Prevention of Pollution) Act, 1951; a print is also included of a number of statutory instruments dealing with land drainage and other matters within the scope of the book.

The strength of *Coulson and Forbes* has, however, always been the learned authors' exposition of the common law on a large variety of complicated and often abstruse topics, and also their detailed discussions of a number of leading cases. In the main, this matter had been left untouched in the present edition, the learned editor being content to note in the appropriate places recent developments in the law.

Unfortunately he does not seem to have taken the revision of the matter of the 5th edition far enough. Without losing any of what was valuable in former editions, he could with advantage have expunged the many references to repealed statutes and out-of-date textbooks; thus, the Poor Law Amendment Act, 1868, s. 27, has been replaced (and extended) by the Local Government Act, 1933, s. 144 (see pp. 25 and 112); the Housing Act, 1925, s. 108, has been replaced by the Housing Act, 1936, s. 78 (see p. 402); county court procedure is now regulated by the County Courts Act of 1934, and not by the Act of 1888 (see pp. 724 *et seq.*); and in many places throughout the book, reference is made to sections of the Public Health Act, 1875, that have been replaced by corresponding sections of the Act of 1936; we also noted at least one reference to the 11th edition of *Gale* (on p. 296), and there are more up-to-date textbooks on rating law (*e.g.*, Faraday), than that referred to on pp. 700 *et seq.* Further, do the references to the 1909 edition of *Encyclopaedia of the Laws of England* (*e.g.*, on p. 5), really serve any useful purpose in a book published in 1952—and is a case, decided in 1906, still entitled to the description "recent"? (see p. 83).

So far as we can tell, the learned editor has commented on all the cases of importance that have been reported on this subject since 1933 (the date of the 5th edition), but he has not always fully woven those—and the statutory changes—into the text; thus, *Neath R.D.C.* v. *Williams* 66 T.L.R. (Pt. 2) 539; [1950] 2 All E.R. 625, is not noted on p. 161 nor on p. 877, although it is reported on another point on p. 825; although the statute itself is well annotated at p. 1077, the effect of the very important Rivers (Prevention of Pollution) Act, 1951, does not seem to have been considered at all in Chapter III—surely the useful comments on the 1876 Act should have been, at least to some extent, replaced

by similar remarks on the 1951 Act (see pp. 208 *et seq.*). The observations in note (d) on p. 202 will need revision in light of *Pride of Derby* v. *British Celanese, Ltd.* [1952] 1 All E.R. 1326, reported far too late to receive consideration in this edition. The Rural Water Supplies and Sewerage Act, 1951, should have been noted on p. 397, and a note might have been added to s. 8 of the Agriculture (Miscellaneous Provisions) Act, 1941, on p. 951, referring to the Local Land Charges (Amendment) Rules of 1942, making these charges registrable in Part V of the local land charges register. A fuller treatment of the complicated and difficult, but very important, Coast Protection Act, 1949, would have been helpful—in particular, the learned editor's views on what should be treated as "contributory land" for the purposes of a works scheme under the Act, would have been interesting—the narrative on pp. 57 *et seq.*, is really little more than a paraphrase of the words of the statute.

The Index is reasonably full and, so far as we can tell, accurate, but we would put in a plea for the next edition to include full references in the Table of Cases; in this edition, even the references in the text are often to one set of reports only. Surely by now these otherwise excellent publishers realise the importance of full references in a practitioner's work of this standing?

We have ventured to raise these points as they seem to us to be flaws in an otherwise most useful new edition; but the book can worthily replace its predecessors, and be recommended to the profession, provided these and similar points are borne in mind when the book is in use.

J. F. Garner.

Local Land Charges. By J. F. Garner, LL.M., Solicitor and Town Clerk of Andover. (Shaw & Sons, Ltd. Second Edition. 1952. 168. 17s. 6d.)

The first thing I notice about this book is that it states the law as it was on March 1, 1952. It is not often that publishers can produce a work so speedily. The first edition of this work was published in 1949 and its popularity is shown by the fact that a second edition is so soon called for. The book is a truly admirable account of a really technical and difficult subject. It is very well set out and the headings, subheadings, paragraphs and general arrangement make it very easy to find one's way about the text. Practitioners should find the alphabetical table of local land charges very useful. The index is, perhaps, a little sketchy and it could be amplified with advantage. For instance, on p. 62, there is a heading "registrable charges" but this cannot be found anywhere in the index.

The book is primarily of interest to lawyers connected with local government, but conveyancers will find it a very useful publication to keep near them. Most solicitors in private practice have little knowledge of the wide extent and importance of the charges which are now registrable under the Act of 1925. This edition, for instance, includes new rules made as the result of the Coast Protection Act, 1949, the Housing Act, 1949, the Public Utilities Street Works Act, 1950, the Highways (Provision of Cattle-Grids) Act, 1950, and the

National Parks and Access to the Countryside Act, 1949. A number of these provisions may affect the conveyancer in private practice.

Not many people, perhaps, will read this book straight through. Local land charges are the creation of statute law and it is not often easy to read Acts of Parliament with great interest. This author, however, makes his subject so interesting that the book can be read as a whole. It is suggested that, at any rate, readers who consult a particular chapter should read the whole chapter in order to get a clear picture of the aspect of local land charges which they are considering.

The author starts by describing the register and then deals with searches and search certificates. The following two chapters discuss the general financial and specific financial charges and priority notices relating to them. He then considers planning charges and miscellaneous prohibitions and restrictions. Following chapters deal with charges specifically registrable by statute, the enforceability of local land charges, the modification and cancellation of charges and priority notices. Then comes a chapter on statutory registers outside local land charges, such as those under the Town and Country Planning Act and the Private Street Works Act. The last chapter but two deals with preliminary inquiries. They are, perhaps, better described as the standard purchaser's inquiries of a local authority. They are now so important that, in the next edition, I suggest the author might consider setting them out in full, with comments upon them where necessary. The next chapter discusses local land charges and registered land. The last chapter deals with the proposals of the Lord Chancellor's Committee on local land charges made in its Report published in January, 1952 (Cmd. 8440, H.M. Stationery Office). Legislation is needed to carry out this Report. The author says there may be some delay before Parliament will find time to deal with it. The subject does not arouse popular interest and law reform appears to arouse little interest among Government Departments. Perhaps, therefore, some lawyer member of the House of Commons with some experience of local authority work could be persuaded to introduce a private member's bill to enact the proposals in this Report, if one of the local authority associations or some other body could provide him with a bill already drafted. This might force the hand of the Lord Chancellor's Department. I call particular attention to this point because it is scandalous that many able men and women freely spend many hours out of busy lives preparing reports for Government Departments which are so often pigeon-holed.

The appendices of this book include the relevant sections of the 1925 and 1926 Acts and most of the rules. If the appendices are to be complete, perhaps all the rules under the Acts mentioned on p. xix should be included. Moreover, p. xix should give the page numbers of the book where the rules are referred to.

This book is a valuable one. It is essential to all local authorities who keep registers of local land charges and should have a good circulation among practitioners. I expect that a new edition will soon be called for and I hope that when it is, the author will be able to incorporate the amendments to the law made by a new Land Charges Act.

ROBERT S. W. POLLARD.

Practical Points

All questions for consideration should be addressed to "The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of the replies.

383. *Claims on £300 million fund—devise of land*

A testator by a codicil dated June, 1951, devised seven cottages to his son. The cottages are situate near the centre of a rapidly growing industrial town. A claim for loss of development value had been duly made by the testator in his lifetime, but there was no reference whatever to this in the codicil.

The testator died in November, 1951. The son became bankrupt in April, 1952, before the testator's executors had assented to the devise. The restricted value of the site of the cottages has recently been agreed with the Central Land Board at £1,285 and the unrestricted value at £2,965, giving a development value of £1,680. The trustee in bankruptcy now claims that the compensation passes with the devise and that the executors should assent to its vesting in him or should assign it to him.

Does the devise, which it will be observed was made after the Act came into force, give the devisee or his trustee in bankruptcy the right to have the compensation transferred to him? [L. & H.]

ANSWER

S. 64 of the 1947 Act provides that the right to receive a payment under Part VI is to be transmissible by assignment or by operation of law as personal property. In the present case, in my opinion, the right to the claim did not pass as part of the devise to the son, but formed part of the testator's residuary personalty. Unless the son was also entitled to such personalty (either under the will or on a partial intestacy), the claim is not now vested in the trustee in bankruptcy. If the son was so entitled to the claim, then the trustee in bankruptcy can now call for a transfer thereof, either by

assent or assignment; written notice thereof should be given to the Central Land Board. [J. F. G.]

384. *Compensation for compulsory purchase—interim development permission expired before July*, 1948

We have been asked to advise a client who is contemplating purchasing a wooden bungalow, and he is particularly concerned as to the amount of compensation he would be entitled to receive should the property be acquired compulsorily at a later date.

The bungalow was erected originally under an interim development permission limited to a period of 10 years which expired prior to July 1, 1948. This temporary permission was never renewed and since 1948 no enforcement action has been taken.

We understand there may be some doubt as to the basis on which compensation would be assessed in such a case, and we should be glad to know your views. Will the fact that the development has never been specifically approved have any effect on the amount of compensation payable? [C. M. & S.]

ANSWER

There may be an alternative power to require removal of the bungalow if it was licensed as a temporary building under the Public Health Act, 1936.

From the planning angle, under the 1932 Act removal without compensation could be required (on a scheme coming into operation) of a building erected without interim development consent after a planning resolution by the local planning authority but before the making of the scheme. Under the 1943 Act such removal could be required even before the making of the scheme.

There is no corresponding provision in the 1947 Act under which, if no action is taken within specified time limits, action becomes barred. Whilst action can be taken the building exists on sufferance, and its retention, being in contravention of a condition of the permission, is contrary to law and subject to rule (4) of s. 2 of the 1919 Act (under which compensation for the building would have to be excluded). Once the time for enforcing the condition has passed the illegality ceases, for although it is not provided, as in the Building Restrictions (War-Time Contraventions) Act, 1946, that the lapse of time for taking action regularises the contravention, the latter Act

indicates the intended principle in these matters. The alternative is to suppose that there was an intention to keep alive for ever a technical breach of the law against which no action can be taken, a rather foolish position for the law.

I therefore incline to the view that the value of the bungalow would now have to be taken into consideration under rule (2) of the 1919 Act, and since there is nothing in para. 1 of Sched. III to the 1947 Act to exclude the right to rebuild, the right to replace the wooden bungalow with another wooden bungalow (subject to the ordinary by-laws, s. 112 (1) of the 1947 Act) or even with a permanent building must be assumed to exist. [W. A. L.]

385. *Development—change of use from furniture store to auction sale rooms.*

Property in a business area has been used, with permission, as a furniture store. A firm of estate agents has inquired whether a planning permission is necessary for the use of the same premises as auction sale rooms.

The Use Classes Order is of no obvious assistance in the matter and I should be glad to learn if you consider that a material change of use is involved. [R. M. N.]

ANSWER

The expression "furniture store" is ambiguous and may mean (a) a retail furniture shop, (b) a furniture warehouse, depository or repository where furniture is taken in for storage, and (c) a place where furniture is stored after manufacture and pending delivery to retailers.

An auction sale room as run by an estate agent is usually primarily a place where goods are sold by retail although dealers are often present. As premises where goods are sold by retail they fall within the definition of shop in the Use Classes Order, 1950. Therefore, if the furniture store is (a) above, there would be no change of use; if (b) or (c) there would be. [W. A. L.]

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"Planning Law" Notes

We include in this issue two articles on the Town Development Act, 1952, an important planning statute which came into operation on August 1, 1952. The Act is complementary to the New Towns Act, 1946.

We report (*post*, pp. 571, 572) two more successful appeals to the Lands Tribunal against determinations by the Central Land Board on claims for loss of development value under Part VI of the Act of 1947. There have been twenty-four decisions in these appeals so far, of which seven have been in favour of the appellants. This does not include the figures for appeals under the corresponding provisions of the Scottish Act of 1947.

The difficulty, and indeed impossibility, of laying down any general rules in relation to the deciding of most planning appeals is well illustrated by the Minister's decision not to allow the erection of a pre-fabricated dwelling-hut in a residential area at South Hayling, Hampshire (see p. 578, *post*). The decision in a case of this nature must be taken after a careful weighing-up of all the circumstances of the case, and as the Minister remarks, what is right in one part of a development area may be quite wrong in another. Particular regard was paid in this case to the type of house in the immediate neighbourhood of the site in question and the conclusion reached was that a building of a totally different kind should not be permitted.

The popularity of the caravan in modern times, both as a holiday abode and as a more permanent dwelling, is reflected in the frequency with which references to caravans occur in our post-bag. Many people seem to have turned to a caravan for a home pending the opportunity to build a permanent dwelling-house. The planning decision noted on p. 579, *post*, is another useful guide to the views of the Minister on the

question of whether planning permission should be given for this kind of development.

The current issue of the Journal of the Town Planning Institute contains two interesting articles on the legal and administrative aspects of town planning.

The first is an address on "Town Planning as a Problem of Government" given by Professor W. A. Robson at a General Meeting of the Institute in June, which contains many stimulating thoughts. The need for recognition of the importance of the planning function, both by politicians and by the general public, and the desirability of establishing a central advisory council, and of setting up regional planning authorities, are some of the matters discussed by Dr. Robson. He draws attention to the psychological difficulties of stimulating public interest in planning, which "at the present time is very much at what one might call the Third Programme stage of evolution. It probably appeals to about a quarter of a million people in this country out of forty million or so, and somehow it must be made into the Home Service or Light Programme if it is to become politically important."

The second article in the Journal is the report of a committee of the Institute which has been investigating the practical working of the Act of 1947. The general conclusion of the committee is that the planning provisions of the Act are working smoothly and notable progress has been made. The committee considers, however, that there is room for improvement in a number of respects, which are discussed under the headings: A. matters of administration or technique; B. matters rectifiable by statutory instruments; C. matters involving ministries other than the Ministry of Housing and Local Government, and other organisations; D. matters involving legislative amendment.

A Lands Tribunal decision noted in this issue (p. 573, *post*) contains a number of interesting points and some useful observations by the Tribunal in a case where a war-damaged dwelling-house had been compulsorily acquired. The comparative method of valuation was apparently preferred to the residual method, which was stated to be not relevant to an open

market transaction. The claimant's valuation by the residual method—on the basis of value to a purchaser for conversion of the house to flats—was nevertheless examined in detail. The effect of licence restrictions and restrictive covenants as affecting value was considered, and the combined effect of notional lease under s. 52 and notional reinstatement of war damage under s. 53 seem to have raised quite a problem in relation to notional redecoration of the premises.

Valuation by the comparative method was accepted as being appropriate, but values in comparable cases cited in evidence were viewed very critically when the purchaser was a local authority.

The measure of compensation for loss of professional earnings and goodwill was also considered, and a claim for the legal costs incurred in obtaining alternative accommodation was rejected, a previous decision of the Tribunal on this point (the *Mapstone Case*) being distinguished.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the MANAGING EDITOR, *Journal of Planning Law*, 3 CHANCERY LANE, LONDON, W.C.2. *Every attempt will be made to return drafts or unsuitable copy, but no guarantee can be given in this respect. Books for review should be sent to the Publishers at the above address.*

The Town Development Act, 1952

By Desmond Heap, ll.m., l.m.t.p.i.

Comptroller and Solicitor to the Corporation of the City of London

The Town Development Act, 1952 (which does not apply to Scotland or Northern Ireland) came into force on August 1 last. It does two separate things. These, taken in the order in which they can be most easily disposed of and not necessarily in order of importance are: (a) to repeal subs. (5) of s. 19 of the Town and Country Planning Act, 1944, and part of subs. (1) of s. 5 of the New Towns Act, 1946; and (b) to provide for "town development" in country districts with a view to relieving congestion and overpopulation elsewhere.

Repeal of Town and Country Planning Act, 1944, s. 19 (5).

Subsection (5) of section 19 of the Town and Country Planning Act, 1944, it will be remembered, contained the enactment which prevented the Minister of Housing and Local Government from giving his consent, even if he wanted to give it, to the sale of the freehold estate in any land, or to the grant of a lease for more than 99 years of any land acquired under the powers of the Town and Country Planning Acts of 1944 or 1947, except in exceptional circumstances which were not defined. The original intention behind the subsection was that when land had once fallen into local authority ownership it should never again be allowed to pass into private hands but that, on the contrary, if it was to be used for private development the private developers should not be given anything more than leases for 99 years so that in due course, on the expiration of those leases, the land would once more, and without further need of purchase, fall back into the possession of the local authority ready for redevelopment in accordance with what would, in those future days, be regarded as the best thing in planning.

Subs. (5) of s. 19 of the 1944 Act has been criticised by those who did not like it, and it is now repealed completely by s. 18 of the Town Development Act, 1952, which also repeals

a similar enactment contained in the proviso to subs. (1) of s. 5 of the New Towns Act, 1946. It does not, however, follow from this that the way is now wide open for the grant by local authorities of freehold estates in land which they have purchased in order to secure planned redevelopment. A local authority can do nothing with land which they have purchased for such a purpose except as the Minister of Housing and Local Government wills. This is the effect of subs. (4) of s. 19 of the 1944 Act. All that has happened is that whereas before the coming into force of s. 18 of the Town Development Act, 1952, it was essential that the Minister should find "exceptional circumstances" before he was allowed to consent to the sale of the freehold in, or the grant of a lease for more than 99 years of, land acquired by a local authority for planned redevelopment, the Minister can now, *if he so wishes*, grant his consent to such disposals of planning land whether or not there are exceptional circumstances. But the Minister is not obliged to give his consent to any such disposals. The matter is entirely one for his discretion and if for the furtherance of the planning policy which he has in mind (and for which he is answerable to Parliament and not to courts of law) he thinks it right to withhold his consent to the selling of planning land or to its leasing for terms of more than 99 years, he is still perfectly entitled to do so.

Encouragement of town development

The other thing which the Town Development Act, 1952, does is to provide, as its title suggests, for "town development." This is defined (s. 1 (1)) as meaning, in effect, the provision of housing accommodation in a county district (*i.e.*, a non-county borough, an urban or a rural district) so as to relieve congestion or over-population elsewhere. "Town development," it may be noted, includes not merely the provision of the houses which are its *sine qua non* but also, if it is thought desirable, additional matters in the way of accommodation for industry or other activities (*e.g.*, professional or business activities), public services (*e.g.*, gas, water and electricity), and places for public worship, recreation and amenity (swimming baths, cinemas, theatres, dance halls, hotels, libraries, museums, etc.).

In short, town development, whilst it may be restricted exclusively to housing development (and thereby be in danger

of developing into a dormitory suburb) can be so extended as to involve the creation of a town—a new town—complete in all respects.

The county district in which town development takes place is called in the Act a "receiving district" (s. 1 (2)).

Exchequer grants are payable (s. 2 (1) and (2)) (subject to the Minister's approval) towards the expenses incurred by the council of a receiving area in carrying out town development on a "substantial scale" (of which the Minister, in the absence of any definition of this expression, will be the judge) and with the effect of relieving congestion in—

(i) a county borough, or
(ii) the administrative county of London, or
(iii) a county district in an area of continuous urban development adjacent to the administrative county of London or in an area of continuous urban development adjacent to another big centre of population, or
(iv) a county district outside the county in which the development is to be carried out.

The Exchequer grants are payable subject to such conditions as the Minister may think expedient for securing the relief from congestion which is the purpose of the carrying out of the town development (s. 3 (1)), and any breach of the conditions by the council of an authority in receipt of an Exchequer grant may lead to the withholding or postponing of the grant (s. 3 (2) and (3)).

In addition to the Exchequer grants just mentioned contributions towards the expenses of town development may be made (subject to the Minister's approval) by any local authority who is being benefitted by it (s. 4 (1)), and that local authority may, when arranging to give such contributions, lay down its own conditions for securing that the town development shall, in fact, relieve congestion in that authority's own area (s. 4 (2)).

The council of a receiving district is authorised, for the purposes of carrying out town development, to use its powers for the benefit not of its own area but for that of other areas (s. 5), and is also authorised to acquire compulsorily any land required in connection with town development both before (s. 6 (2)) and after (s. 6 (1)) a development plan comprising the necessary land has become operative under the Town and Country Planning Act, 1947, even though the land is *not* designated in the plan as liable to compulsory purchase. The method of compulsory acquisition (s. 6 (4)) is

that contained in the Acquisition of Land (Authorisation Procedure) Act, 1946. The whole of s. 6 of the Town Development Act, 1952, is to be construed (s. 6 (5)) as one with Part IV of the Town and Country Planning Act, 1947, with the result (*vide* s. 44 of the 1947 Act) that the provisions of ss. 19 to 30 of the Town and Country Planning Act, 1944 (which provide, *inter alia*, for the disposal of land acquired by local authorities for planned redevelopment) apply to land acquired by a receiving authority for the purposes of town development. This means there can be no sale or lease of such land by the receiving authority except with the Minister's consent, but (as already explained) the Minister now has an unfettered discretion in granting his consent to the sale of the freehold in, or to the lease for more than 99 years of, any such land.

In connection with the acquisition of land for town development the following provisions of the Town and Country Planning Act, 1947, namely, s. 39 (1) (relating to the expedited completion of purchases in accordance with the Sixth Schedule to the 1944 Act), s. 40 (1) (relating to the acquisition of land by agreement with the Minister's consent), and s. 45 (2) (relating to the confirmation of a compulsory purchase order in successive parts) are made applicable by s. 6 (6) of the 1952 Act.

Town development will not necessarily be carried out by the council of the receiving authority. On the contrary, the council of the authority whose congestion and over-population is to be relieved by town development in the area of some nearby county district may, for good reason, wish to carry out the requisite town development itself or, at least, some portion of it. Accordingly, provision is made in the 1952 Act (ss. 7 to 14 inclusive) whereby certain authorities (*vide* s. 7) are made eligible to participate in town development even though they are not receiving authorities. Such participation may take place by agreement between a participating authority and a receiving authority (s. 8), or as a result of an order made by the Minister on the application of the participating authority and after consultation with the receiving authority (s. 9). Exchequer contributions can be made by the Minister towards the expenses of a participating authority (s. 10 (1) and (2)), and contributions may also be made to such an authority by other local authorities who benefit by the town development undertaken by the participating authority (s. 10 (3)).

Provision is made for the establishment by order of the Minister on the application of two or more county borough or county district councils, and after consultation with the receiving authority concerned, of a joint body, constituted from those councils, to participate on their behalf in town development (s. 12).

Nothing in the Town Development Act, 1952, dispenses with the need for a grant of planning permission under the Town and Country Planning Act, 1947, in respect of any kind of town development (s. 21).

The foregoing outline of the Town Development Act, 1952, will be sufficient to show how reminiscent of the New Towns Act, 1946, are its provisions. The object of each of these Acts is the same—the relief of dense, overcrowded, congested areas by the removal of population, business, industry, means of entertainment and places of public worship to some new place, there to form either a brand new town or a deliberately planned addition to an already established small town which is to be enlarged. It is in the means whereby the two Acts seek to attain these objects that they differ. The New Towns Act, 1946, after much discussion as to whether the new towns should be built by Government sponsored bodies or by local authorities, chose neither of these and established independent *ad hoc* bodies, known as new town development corporations, for the purpose of creating the "new towns." The Town Development Act, 1952, seeks a solution of the problem of overcrowded built-up areas by the encouragement of "town development" (which, as shown earlier in this article, can be so comprehensive as to constitute the establishment of a complete town) by local authorities whose powers are widened as required and who are accorded financial help from central funds to assist them in the use of their new powers. The powers of the New Towns Act, 1946, are still available but it would appear that resort to them will now vary inversely as use is made of the provisions of the Town Development Act, 1952.

The Town Development Act, 1952

By J. K. Boynton, M.C., LL.B., Solicitor

The Town Development Act, 1952, is a non-party measure conceived during the term of office of the late Government and safely delivered by its successors during the present session of Parliament. For a non-controversial measure the Bill received a great deal of attention in Standing Committee, and on Third Reading the draftsmanship of the Bill came under heavy fire from several members of the legal profession. Indeed, one of Her Majesty's counsel was moved to remark: "From a drafting point of view this Bill is the worst I have ever seen." This was no doubt a pardonable exaggeration, bearing in mind that it was uttered at twenty minutes past two in the morning. Those who are able to give their first reading to the Act in the hours of daylight will probably prefer the more charitable attitude of the Minister himself: "When I was first presented with the clauses of the Bill I read them through a great number of times without understanding them, and I find new beauties in them every day!"

The Act is a direct descendant of the New Towns Act, 1946, but instead of seeking to combat the evils of over-concentration and over-population by the creation of new towns, it encourages rather "expanded towns." Population which cannot be accommodated in our overcrowded cities is to be exported to an existing township, expanded to meet the needs of the additional population. It has always been recognised that new towns alone could not carry the whole burden of the policy of dispersal and decentralisation recommended by the Barlow Committee. Whilst the Act encourages the expansion of an existing township as the normal case—a leap-frog movement of population from the city into an area some distance from the city boundary—there may still be cases where a peripheral expansion on the boundary itself is desirable. The Minister, however, stressed that in these cases he hoped that neighbouring authorities would reach agreement between themselves if it was at all possible. (H. of C. Debates, February 26, 1952, Vol. 496, col. 887.)

Generally speaking, the object of the Act is that large towns wishing to provide for their surplus population should do so by friendly arrangement with neighbouring authorities.

The county district in whose area the houses are to be built and who will be one of the partners in the undertaking, is referred to in the Act as the "receiving district" (s. 1 (2)); the city with an overspill problem is for convenience referred to as the "exporting district"—though this expression does not appear in the Act—and development carried out as a result of the arrangements is referred to as "town development." It should be pointed out at this stage that the Act is primarily a housing measure, and that unless houses are provided there can be no question of there being town development within the meaning of s. 1. Houses there must be: there may also be industry, sports fields, churches and other things necessary to provide community life. The necessity for providing adequate industry in the expanded towns was stressed again and again by speakers on both sides in the debates in the House and in the proceedings in committee, and the Government expressed their intention of avoiding the mistakes of the past in which mere dormitory estates were created. For all that, the provision of industry is necessarily made discretionary because there are a few cases where there is ample employment but insufficient houses and workers.

Ordinary planning procedure unaffected

The first questions to be settled in any case where an overspill problem exists are obviously planning ones. The Act makes it abundantly clear in s. 21, which is declaratory of the existing law, that nothing in it is to obviate the necessity for planning permission for any development carried out under its provisions. Whether a county district should receive overspill population; how many houses should be built; where they should be located and whether any and if so what degree of provision should be made for industry are all preliminary questions which must be settled under the normal procedure in the Town and Country Planning Act, 1947. There is no doubt in these questions the possibility of a fruitful source of disagreement between local authorities. The Minister has therefore undertaken that if there is an objection to a project as a whole on planning grounds by the receiving authority, and that authority wants a public inquiry, there will be a public inquiry. (H. of C. Debates, June 12, 1952, Vol. 502, col. 620.) This promise should satisfy receiving districts that they will be able adequately to put forward their point of view in public. The Minister's undertaking,

however, does not extend to an inquiry in public into such questions as to who is to build the houses, what contributions are to be made by the participating authorities, and so forth, for these are not planning issues.

Main powers in the Act

When the ordinary planning methods have operated to determine where development shall be carried out, the Act assists the carrying out of that development in two ways. In the first place money is made available to assist the development, and in the second, additional powers become available to the local authorities concerned. The money is unfortunately not only limited in amount, but is also not available for all schemes which satisfy the definition of town development in s. 1. An authority promoting development which satisfies s. 1 will be able to use the various additional powers which the Act confers. It can, however, only hope for Exchequer assistance if the scheme can in addition be brought within s. 2. Any development which provides houses in a county district and relieves congestion or over-population is "town development," but Exchequer assistance is only available if (a) the town development is on a substantial scale, and (b) congestion or over-population is relieved in one of the big centres of population or an adjacent built-up area or in a county district outside the county in which the development is to be carried out. It follows from this that Government money will not normally be available for what may be called "in-county" moves. The Bill as drafted made no financial provision whatever for these cases, but there was considerable pressure from members in committee about this point. In the result the Government introduced an amendment (now s. 2 (1) (*b*)) which makes Exchequer assistance available to any county district in the fringe area of a big centre of population. The special problems of county districts in Middlesex are thus covered. Even when Exchequer assistance is not available, however, for example, to a large non-county borough such as Luton, it is not accurate to say that the Act is inapplicable. The powers in the Act are still available, although the money is not.

What briefly are the powers which the Act gives?

(1) Local authorities may make financial contributions to schemes of town development which they could not usually make under the general law (ss. 4, 10 (3) and 16).

(2) County councils may in certain circumstances exercise housing or sewerage powers (s. 8 (1) (*c*)).
(3) The legal disabilities on a local authority taking action which is not for the benefit of its area are removed (ss. 5 and 8 (1) (*b*)).
(4) Local authorities may participate by agreement in schemes of town development and such agreements may cover a wide range of activities (s. 8).
(5) Restrictions on the sale of land acquired under the Town Planning Acts by local authorities or under the New Towns Act, 1946, by development corporations are removed (s. 18).
(6) The Minister acquires extensive order-making power to assist town development.
(7) Local authorities may be authorised to acquire land compulsorily for town development as though it had been designated in a development plan as subject to compulsory acquisition. In such cases development charge will be subject to the special provisions of s. 83 of the Town and Country Planning Act, 1947.

Exchequer help is payable either to the receiving district under s. 2 or to a participating authority under s. 10, and is mainly intended to help the carrying out of site works and the provision of essential services. Payment may be made subject to conditions (s. 3). Some schemes carried out between July 31, 1951, and the passing of the Act will benefit.

Some terms defined

As the first two sections of the Act are all important, it may be helpful to indicate briefly in the light of the ministerial pronouncements in the House the interpretation of three phrases used in the sections and not defined in the Act.

(a) "*Congestion*"—an area is congested when it has no more room on which houses can be built.
(b) "*Over-population*"—an area might be short of land suitable for the erection of factories, *e.g.*, owing to subsidence or subsoil problems, with the result that it was over-populated in relation to its employment capacity, without being congested.
(c) "*Substantial scale*"—schemes will only qualify for Exchequer assistance if they are substantial. The lowest figure mentioned by the Minister corresponded to 1,400 houses, but where one district is receiving

population from several exporting authorities, it may aggregate the figures from each. The exporting authority is in every case expected to shoulder its own share of the burden, for it has a duty to house its own people. The test is in any case rather the resources of the receiving district than whether the scheme is substantial from the point of view of the exporting authority. Apparently, therefore, if an exporting authority " pepperpot " their surplus population over several districts so that each receives but a few, there will be no Government help, even though in total the population moved is substantial. No doubt a Ministry circular may be expected on the general question of what schemes are substantial. Meanwhile reference may be made to the following Government pronouncements in the House:—H. of C. Debates, February 25, 1952, Vol. 496, col. 737, and Standing Committee " C " Official Report, March 19, 1952, cols. 48–50.

Agreements for participation

The authorities who are eligible to participate in a scheme of town development are set out in s. 7, and the matters which may be covered by an agreement are dealt with in s. 8. It will be noticed that not only is the Minister's authority needed before an agreement is entered into, but also the receiving district must be a party to any such agreement. It is not possible for two other local authorities concerned to make arrangements over the head of the receiving district. The same is true in any case where the responsibility for providing sewerage is to be shifted to a participating authority. In general the Minister expects the receiving district to carry out the physical development in its area (H. of C. Debates, February 25, 1952, Vol. 496, col. 727).

The following are examples of matters which could be covered by an agreement under s. 8:—

(a) A county council could provide architectural services for the benefit of a receiving district or group of districts who had no technical personnel: a county borough council could put up houses in the receiving district using its direct labour force and acting as contractor for the receiving district (s. 8 (1) (*a*)).

(b) A county council could exercise the powers of a housing authority in the area of the receiving district (s. 8

(1) (*c*)). In this connection s. 11 may be noticed. It provides for the modification of enactments consequential upon the participation of the county council.

(c) A county borough council could transfer land owned by it outside its boundaries to the county district for the area in which the land was situate, to enable the district council to erect houses on it (s. 8 (1) (*d*)).

(d) If under the previous example the county borough council had transferred the land to the county council for development, the latter could after development retransfer the land to the county borough, or alternatively, could transfer it to the receiving district (s. 8 (1) (*e*)).

Inter-authority contributions

An exporting authority may, with the Minister's approval, contribute to the expenses of a receiving district (s. 4). In many cases no doubt the contribution will take the form of the exporting authority bearing the whole or part of the annual rate fund contribution which the receiving district council are obliged to find. An exporting authority may also contribute towards the expenses of a county council in providing additional county services (s. 10 (3)). This is the only sort of contribution a county council can expect towards county services, as there is no Exchequer assistance provided in s. 2 for the additional schools, roads and so forth which the county council may find itself liable for as a result of the town development. County councils already have legal power to contribute to the expenses of a receiving district in the county by virtue of s. 126 of the Local Government Act, 1948. A receiving district can thus hope for financial help from the Exchequer, from the exporting authority (probably a county borough) and from its own county council. Indeed, it would seem possible for an adjoining county district to participate (s. 8 (1) (*b*)) and make a contribution (s. 8 (1) (*g*)).

Sewerage and land drainage

The Act contains a number of special provisions in relation to sewerage and land drainage.

(a) Under subs. (4) of s. 8 the Minister may, on the application of the authorities concerned, provide by order for the carrying out of sewerage works and for the exercise of sewerage powers under the Public Health

Act, 1936, by a participating authority: the order may where necessary provide for the transfer to that authority of any existing sewers and sewage disposal works vested in the sewerage authority for the district. An order under this section will in effect deprive the receiving district of its sewerage powers in the area of town development and transfer them to one of the other authorities concerned, *e.g.*, to the exporting authority or the county council.

(b) By s. 15, the Minister may by order constitute a united district for sewerage purposes under s. 6 of the Public Health Act, 1936, without an application from any of the authorities concerned. The order may provide for the combination of sewage disposal or sewerage systems.

(c) In consequence of experience in connection with the River Mole at Crawley, power has been given in the Act to both the receiving district and any participating authority to contribute to the cost of land drainage works made necessary as the result of town development. By virtue of s. 2 (2) (*f*) and s. 10 (1) (*b*) such payments are eligible for Exchequer assistance—provided, of course, that the scheme of town development as a whole is within s. 2.

Order-making powers of the Minister

A brief summary of the many order-making powers of the Minister will enable a few outstanding points to be mentioned. These powers are—

(1) To provide for the participation of a local authority in a scheme of town development, where the receiving district are unable or unwilling to make an agreement under s. 8 (s. 9). Unless the receiving district assent to the making of such an order it must be laid in draft before each House of Parliament and approved by resolution.

(2) To modify enactments where a county council exercise the statutory powers of a county borough in the receiving district (s. 11).

(3) To set up a joint body on the application of two exporting authorities who wish to act together in a scheme of town development (s. 12).

(4) To adjust matters when a scheme of town development has been completed (s. 13). A housing estate erected

by a county borough in the receiving district might, for example, eventually be transferred to the receiving district. In view of the difficult financial matters which may arise in this " tidying up " process, any order made will be subject to special parliamentary procedure.

(5) To transfer sewerage powers from one authority to another under s. 8 (4) or to combine sewage disposal systems under s. 15 as mentioned in the preceding paragraph.

Conclusion

The basic principle of the Act is that there should be friendly co-operation between local authorities to solve problems of congestion and over-population. Co-operation has in the past not always been as good as it might have been owing to the threat of boundary extensions, and it remains to be seen whether this Act, which the Minister himself described as: ". . . in a sense . . . a stop-gap Bill to get over an immediate problem . . . " will succeed in its objects. It is, no doubt, true that if there was a thorough-going measure of local government reform, many of the problems dealt with by the Act would disappear. It seems reasonably clear that there are no immediate prospects of reform, and many will welcome Sir Robert Adcock's plea at the Rural District Councils Association conference that " . . . we settle down to administering local government as it exists today untrammelled and untroubled by threats of change." The prospects of success for the Town Development Act would certainly seem brighter if there were general acceptance of present boundaries and areas in spite of their imperfections so that the problems of overspill could be considered without regard to the possibility of town development being used as a means of securing a boundary alteration.

Reinvestment Costs on Compulsory Purchase

By W. A. Leach, F.R.I.C.S.

In *Mapstone* v. *Bristol Waterworks Co.* (1950) 2 P. & C.R. 1[1] the Lands Tribunal allowed as disturbance £337 11s. 0d. in respect of legal fees and stamp duty and £25 valuer's fees (for ingoing valuation only) incurred by the claimant in purchasing a new farm, being reimbursement to the extent necessary to provide equivalent assets to those taken. The allowance was made on the ground that the claimant had thereby minimised his claim for disturbance and it was expressly left open whether a claim for costs, etc., could be made in different circumstances.

In *King* v. *Bristol Waterworks Co.* (1951) 2 P. & C.R. 18[2] fees and stamps on the purchase of other property or on equivalent reinvestment of capital moneys were disallowed on the ground that the special value with vacant possession could only be realised by accepting the fact that reinvestment expenses might have to be incurred. Presumably the Tribunal might have allowed them in other circumstances, but see [1951] J.P.L. 451.

The basic rule of compulsory acquisition (subject only to statutory modifications) is that the owner is entitled to "all the loss incurred by his expulsion" (*Ricket* v. *Metropolitan Ry. Co.* (1865) 34 L.J.Q.B. 257) and the basic claim is for the value of the land taken and disturbance (injurious affection and severance being supplementary claims): *Horn* v. *Sunderland Corporation* [1941] 2 K.B. 26.

In this connection there are two rules of s. 2 of the 1919 Act which must be considered:—

Rule (1). "No allowance shall be made on account of the acquisition being compulsory."

The purpose of this rule was to end the custom in existence prior to 1919 of adding 10 per cent. to compulsory purchase valuations. The reason for this practice is not certain but it

[1] Noted [1951] J.P.L. 299.
[2] Noted [1951] J.P.L. 298.

may be that it was to allow for loss of interest pending, and cost of, reinvestment. If this was so, then possibly it simply reduced to a set formula part of the claim resting on disturbance. Rule (1) would, therefore, cancel the formula, but that does not necessarily mean that the claim for disturbance in that respect (if admissible) is also cancelled.

Rule (6). "The provisions of Rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land."

What of the expression "not directly based on the value of land" (*quære* the land compulsorily acquired)? It is the *compensation* which must not be directly based in this way. Compensation for costs, stamps, etc., would be compensation based on scales based on the value of the land : it is not *directly* based on the value of the land, for the scales intervening between the compensation and the value of the land may be varied, and those for costs and fees questioned, without regard to the value of any particular land.

Rule (2) provides for the valuation of the land to be acquired as if offered in the open market by a willing seller. A willing seller does not expect to recover his costs of reinvestment, but that may be a matter in which Rule (6) overrides Rule (2).

If this is so, the only question is whether the costs of reinvestment fall within "disturbance."

They do not represent actual losses such as loss of goodwill, loss on sale of stock or fittings, loss on printed letter and billheads, etc., but the loss on the latter might be measured by the cost of having new letter paper and bills printed for the new address (costs may have gone up since the old ones were printed). The comparable claim would be in respect of the owner's actual costs of purchasing the expropriated investment including not only solicitors' costs and stamps but surveyor's fees as well, for all that expenditure is wasted money and a loss as a result of the compulsory acquisition. If that claim is admissible, the fair measure of the loss according to current values would be the cost of equivalent reinvestment.

Any analogy between the cost of removal of chattels and cost of removal of capital is superficial. An occupier's chattels must be taken away from the premises acquired and placed or set up in other premises. The purchase money on the acquisition is given to the owner in a form that can go straight into his bank account and no removal is essential.

In any case does "disturbance" apply to anything other than the disturbance of the occupier? Acquisition is a disturbance but the compensation therefor is the purchase money. Is that not the end of that chapter as regards costs as compensation for the expense of reinvestment?

The decision in the *Mapstone Case*, however, is attractive and, it is suggested with respect, sound in principle. There the costs were not allowed because other land was acquired but as part of the compensation for expulsion. There must be a right for a claimant to minimise the loss he will suffer even if not a duty to minimise that for which he will claim, and it would be an impractical position if in minimising the loss he worsened his own position—if in spending £50 to save £100 he incurred a burden of £50 and saved the acquiring authority £100.

Expenditure incurred in diminishing damage for which compensation is payable may logically be included as part of the damage up to the amount of the diminution.

The reason given for disallowing costs in the *King Case* was, with respect, unsound. If, following *Horn* v. *Sunderland Corporation*, *supra*, disturbance could in a particular case be excluded on the ground that vacant possession value could only be realised on a sale by suffering disturbance, then the costs of acquiring other property would be lost with the claim for disturbance. The reinvestment of the capital, it is submitted, has nothing to do with the matter.

Generalising, in any case in which there is no claim for disturbance which could be reduced by acquiring other property, the costs of such acquisition (or of equivalent reinvestment or whatever it may be called) could not form a valid item of claim.

Means of Access to and from the Highway

By R. A. Cork, ll.b., Solicitor

It is proposed to note briefly below the statutory encroachments which have been made upon the common law right of an owner of land adjoining the highway to make access thereto from any part of his premises. Whilst it is true that this common law right has always been subject to express statutory limitations, these are now so extensive as to render the common law position of much less importance than formerly.

The main statutory limitation upon the common law right arises from the operation of the Town and Country Planning Act, 1947, which now governs the formation and laying out of means of access to highways; the other limitations are more concerned with the manner in which the common law right shall be exercised. It is proposed to deal first with the 1947 Act.

Town and Country Planning Act, 1947

It may be noted in passing that the 1947 Act repeals ss. 1 and 2 of the Restriction of Ribbon Development Act, 1935, which previously governed the making of access to highways.

The broad effect of s. 12 of the 1947 Act is to require (with certain exceptions) any person desirous of developing land, to obtain planning permission from the local planning authority. "Development" includes the carrying out of engineering operations, in, on, over or under land, and the definition of "engineering operations" in s. 119 (1) includes the formation or laying out of means of access to a highway. Planning permission is therefore now required for the formation and laying out of a means of access to a highway, and such permission may be refused on any of the very wide grounds available to a local planning authority for refusing planning permission. Where, however, a local or private Act of Parliament or any Order approved by both Houses authorises the formation, laying out or alteration of a means of access to any road used by vehicular traffic, and the Act or Order

specifically designates both (1) the nature of the development authorised and (2) the land upon which it may be carried out, the local planning authority must grant permission (and may not even impose conditions upon the grant thereof) unless satisfied that it is expedient to refuse permission or impose conditions on the ground that the formation, etc., of the access ought to be, and could reasonably be, carried out elsewhere on the land (Sched. I to General Development Order, 1950, Class XII).

Machinery is provided by the General Development Order, 1950, whereby local planning authorities are required to consult with other authorities before granting permission for the making of a means of access to certain roads. Thus by article 7 of the Order the authority must consult with the Minister of Transport in such cases as he may appoint, before granting permission for the formation or laying out of any means of access to (1) a trunk road, (2) any road which is comprised in the route of a special road to be provided by the Minister of Transport in accordance with a scheme under the Special Roads Act, 1949, but which has not for the time being been transferred to him, and (3) any road which is provided, or is to be provided, by that Minister in pursuance of any order under that Act and has not for the time being been transferred to any other highway authority. The Minister may by direction [1] to the local planning authority restrict the grant of permission thereby in respect of the formation, etc., of a means of access affecting any of the types of road mentioned above. Article 9 (*c*) of the General Development Order, 1950, also requires a local planning authority to consult with the highway authority before granting permission for the formation, laying out or alteration of means of access to a road (other than a trunk road) for which the local planning authority is not also the highway authority.

Section 149, *Public Health Act*, 1875

This section enables urban authorities, *i.e.*, boroughs and urban district councils, from time to time to cause the soil of any streets in their areas to be raised, lowered or altered. This may affect an existing access. By s. 308 of the 1875 Act any person sustaining damage by reason of any such action on

[1] As to these powers of the Minister of Transport, see the correspondence published at [1952] J.P.L. 266–272.

the part of an urban authority may claim full compensation therefrom, if not himself in default.

Section 18, *Public Health Acts Amendment Act*, 1907.

This section requires the consent of the appropriate local authority to be obtained by any person who intends to provide and use a new means of access to or from any premises fronting, adjoining or abutting on a street which has become a highway repairable by the inhabitants at large, for any cattle, beast of draught or burden, wagon, cart, or wheeled carriage exceeding four feet in width or two hundredweight in weight where such provision involves passage across, or interferes with any part of that street comprising a kerbed or paved footway.

" Street " includes any highway and any public bridge (not being a county bridge), and any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not. " Local authority " means in rural districts the appropriate county council who therefore exercise the power conferred by s. 18 in such districts, unless they have delegated their functions to the rural district council who then act as agents for the county council. In a county borough the power is exercisable by the county borough council; in an urban district the power is exercisable by the borough or urban district council, except with regard to county roads, unless the urban council " claim " such roads, or the county council have delegated their functions with regard thereto. The Minister of Transport is, of course, the authority for trunk roads.

A person wishing to provide a new means of access coming within the ambit of s. 18 of the 1907 Act must give written notice to the local authority of his intention, and must submit for their approval a plan showing the position, gradient and mode of construction of the intended access.

However, it seems that s. 18 merely enables the local authority to consider and, if thought fit, reject the works proposed to be executed; it is doubtful if it enables the authority to reject the proposed place of access apart from the nature of the works. Nor does it appear that the authority can consider questions of safety and convenience of the public except insofar as affected by the nature of the works. *Marshall* v. *Blackpool Corporation* [1935] A.C. 16.

Section 4 *of the Restriction of Ribbon Development Act*, 1935

This section gives a highway authority power to erect and maintain fences or posts to prevent access to any road under

its jurisdiction. "Road" is defined by s. 24 (1) to mean a highway repairable by the inhabitants at large and includes any part of such a highway and any proposed road and any bridge over which such a highway passes or a proposed road is intended to pass. "Proposed road" is also defined by the section. As to who are the "highway authority" see the earlier reference to "local authority."

The section does not permit fences or posts to be erected or maintained so as to (1) interfere with any fence or gate required for the purpose of agriculture (see definition in s. 119 (1) of the Town and Country Planning Act, 1947); (2) obstruct any public right of way or (3) obstruct any means of access for the construction, formation or laying out of which planning permission has been granted under Part III of the 1947 Act, or which was lawfully constructed, etc., before July 1, 1948, in accordance with ss. 1 to 3 (now repealed) of the Restriction of Ribbon Development Act, 1935.

Section 7 of the Special Roads Act, 1949.

This Act authorises highway authorities to make schemes for the provision of special roads for the use of special classes of traffic. Where a special road scheme has come into operation an Order may be made under s. 3 of the Act providing for certain supplementary matters relating to the special road. Such an Order is made by the Minister of Transport in the case of a special road to be provided by him, and by the local highway authority where the special road is to be provided by that authority. In the latter case the Order requires to be confirmed by the Minister.

An Order under s. 3 may authorise the special road authority, *i.e.*, the highway authority for the special road, to stop up any private means of access to premises abutting on or adjacent to land comprised in the route of the special road, where the Minister is satisfied that either (a) no access to the premises is reasonably required or (b) other reasonably convenient means of access thereto are available or will be provided in pursuance of an order made by virtue of s. 7 (1) (*b*) of the Act.

"Any Other Material Considerations"

By J. F. Garner, ll.m.
Town Clerk of Andover

In dealing with an application made to them for permission to develop, a local planning authority are required by s. 14 (1) of the Town and Country Planning Act, 1947, to have regard to the provisions of the development plan, so far as material to the particular application, and "to any other material considerations". It is the point of this note to consider what sort of "other" considerations should be taken into account in this connection.

As a matter of statutory interpretation, it seems that the *ejusdem generis* rule may apply, so that the only "other" considerations that must be taken into account are those similar to the contents of the development plan—*i.e.*, considerations of a "planning" nature—and indeed an aggrieved developer would expect to succeed on an appeal to the Minister if he were able to prove that in refusing his application, the planning authority had taken other than planning considerations into account. The word "material" would also seem to suggest a reference to planning considerations only. Unfortunately, however, this does not really take the matter much further, for the courts have never expressly had to consider exactly what is and what is not covered by "planning" considerations. Questions of "amenities" are quite definitely matters of planning (*Pilling* v. *Abergele U. D. C.* [1950] 1 K.B. 636; 1 P. & C.R. 42), but that is as far as reported decisions seem to help. The Minister has pointed out (see Memorandum on the Drafting of Planning Permissions, accompanying Circular 58/51, para. 12) that although a planning authority may attach to a permission such conditions "as they think fit," conditions which have no relevance to planning have no place in a planning permission: "planning powers ought not to be used as a sort of universal longstop when other powers are

not available "—but again, the limits of " planning " are presumed to be obvious, and are not discussed. It is therefore here proposed to discuss a few matters that have, to the writer's knowledge, been taken into account in considering planning applications.

(a) *The housing needs of the district*

A few months ago the Ministry's representatives had discussions with representatives of the local authority associations on the subject of the projected repeal of Defence Regulation 68CA, which enables local housing authorities to control the use of residential accommodation for other purposes. It was urged in support of the repeal of the Regulation, that this control, the main purpose of which is to " safeguard housing accommodation in these days of shortage " (see note by Mr. Crompton at [1952] J.P.L. 251), was covered by the planning legislation. In other words, apparently, in the view of the Ministry, the availability or otherwise of housing accommodation in a particular district is a planning consideration.

(b) *Preservation of water supplies*

In a recent case within the writer's experience, the local planning authority had refused permission to an applicant who desired to use a meadow in the vicinity of the local district council's water boreholes, as a site for movable dwellings. In giving his reasons for upholding the decision of the local planning authority in the consequent appeal, the Minister said that he " agreed with the council that the main objection to the proposal is its possible effect on the town's water supply." In a second case, on the application of the same district council, the local planning authority made an order under Art. 4 of the General Development Order, 1950, excluding from " permitted development," any development falling within classes IV or V of the Schedule to the Order, in respect of land in the vicinity of the water boreholes. The Minister duly confirmed this order, and in announcing his decision, the Minister stated that although he would be reluctant to exclude those particular types of development from " permitted development " on the grounds of amenity, he was certainly prepared to do so specifically for the purposes of protecting the water supply from any risk of contamination. The prevention of pollution of water supplies is, in a proper case, therefore a planning consideration, at least in the view of the Minister.

(c) *Support as a consequence of coal-mining*

From the interesting article on the Trent Valley Coal-Working decision (see [1952] J.P.L. 433) it seems obvious that the Minister regards it as a matter proper to planning to regulate and provide for support in a proper case, where coal-working is under consideration.

(d) *New streets*

A matter which often causes difficulty is the case of the builder who proposes to erect a house in a private street which is not made up—can the planning authority, as a condition of the planning permission, require him to make up the street, or the portion thereof in front of the particular house? It has been suggested that such a condition is not proper to planning, for it is covered by another statute—the New Streets Act, 1951 (although in practice most highway authorities manage to avoid operating this cumbrous and in many ways unsatisfactory statute)— and, "in general, the powers of the Planning Act ought not to be used to duplicate or alter the impact of more specific legislation" (see Minister's Memorandum, *op. cit.*, para. 12). This argument, until recently, seemed sound enough, but is not the question of building in an unmade road as much a planning consideration as the other matters here considered?

(e) *Public health*

Public health—in the sense of the subjects dealt with by the Public Health Acts—is the parent of planning legislation, and when acting as a public health authority under public health legislation, a local authority may not take planning matters into account (*Pilling* v. *Abergele U. D. C.*, *supra*), but it by no means follows that the reverse of this statement is true. Every day local planning authorities are refusing to permit development on public health grounds—*e.g.*, because no proper sewerage arrangements can be made, etc.

Conclusion

The result seems to be that "planning" covers anything that can be shown to be for the "good" of the community, with the possible exception of matters that could be controlled by other legislation—in the water supply cases mentioned in (b) above, it is doubtful whether the same degree of control could have been obtained over the area in question through

the medium of prevention of pollution by-laws under s. 18 of the Water Act, 1945. Public health matters can, it is submitted, be justified for inclusion as " planning " considerations, on the ground that the public health legislation is, in general, remedial rather than preventive : it may not always be possible, or practicable, under the Public Health Acts to prevent a person committing a nuisance, although it will always be possible to secure the abatement of the nuisance once it has been committed. Planning is intended to look rather to the future, and to prevent from occurring that set of circumstances that may give rise to a nuisance.

Valuations under the Town and Country Planning Act, 1947—III

By Claude Bennett, f.r.i.c.s., f.a.i.

(*Continued from p. 460, ante*)

C. Compensation for the Refusal, Modification or Revocation of Planning Permission

Broadly speaking, the refusal of planning permission does not carry with it the right to compensation, but in so far as the Act provides that in the valuation of land for "existing-use" purposes it is to be assumed that planning permission will be granted automatically for the carrying out of the development specified in Part II of Sched. III, then compensation will become payable under s. 20 for any depreciation in the value of the land due either to the refusal of planning permission or to the grant of permission subject to onerous conditions. This section will also apply to the revocation or modification of permission in accordance with s. 21, providing that the development contemplated is of the class specified in Part II of Sched. III (s. 22 (5)).

The right to compensation, which will be calculated in accordance with the provisions of Sched. IV, is not, however, acquired immediately on receipt of the local planning authority's refusal, as s. 20 can operate only on the dismissal of an appeal made to the Minister or on his decision to grant the application subject to conditions.

Again, this section will not apply in those cases where planning permission for carrying out development of the class specified in Part I of Sched. III is either refused or granted subject to such onerous conditions that the land is incapable of reasonably beneficial use. In circumstances such as this, the only recourse is to serve a "purchase notice" under s. 19, when compensation will be assessed on the basis that permission for the tolerance enumerated in Part I will, in fact, be granted.

Example 1

A freehold furniture depository in a suburb of London is the only industrial unit within the immediate area. Approximately 50 years old, it comprises a two-storied building of brick construction, containing a total floor space of 20,000 f.s. with a cubic capacity amounting to 300,000 f.c. The site occupied is of sufficient area to permit the erection of a two-storied extension measuring 20ft. by 50ft. and having a cubic capacity of 30,000 f.c. The existing warehouse was sold in 1939 for £15,000, but the estimated market value today is £40,000 or the equivalent of £2 per foot super.

An application for planning permission for the erection of this extension has been refused and the Minister has confirmed the local planning authority's decision.

Valuation

Permitted tolerance = 10% of 300,000 f.c. = 30,000 f.c. Therefore, the proposed building is within the tolerance.

(1) *Value with the benefit of planning permission*			£
Existing warehouse—market value			40,000
Proposed new extension 2,000 f.s. at £2			4,000
			44,000
Deduct	£		
Building costs = 30,000 f.c. at 2s.	= 3,000		
Fees and contingencies, say	200		
Risks and profits, say	300		3,500
			40,500
(2) *Value without the benefit of planning permission*			
Existing warehouse (as before)			40,000
		Compensation payable,	£500

Example 2

Some years before the war, a firm of tea blenders bought a terrace property in a business square close to the City. The premises consist of a substantial brick building with accommodation on ground and three upper floors. The building has a frontage of 40 feet and a depth of 30 feet. Its total cubic capacity is 49,200 f.c. It was purchased with a view to the company occupying the upper floors as offices and using the ground floor for storage purposes. During the course of years the accommodation has become gradually redundant, with the result that the three upper floors have each been let as suites of offices and approximately 750 f.s. of floor space on the ground floor has been converted to office user, the company retaining the remainder, totalling approximately 450 f.s. for

storage purposes. The need for this remaining storage space is now no longer present and the company have applied for planning permission to change the use to that of offices. Their application has been refused and the appeal dismissed.

The top floor is let at £100 per annum; the second floor at £135 per annum; the first floor at £175 per annum and the office part of the ground floor at £150 per annum (which is the equivalent of approximately 4s. per f.s.). All rents are exclusive. The part used for storage purposes has a cubic capacity of 4,050 f.c.

Valuation

Permitted tolerance = 10% of 49,200 = 4,920 f.c.

Permitted proportion of tolerance for office user $= \frac{49{,}200 - 4{,}050}{49{,}200} \times 100 = 92\%$

Therefore tolerance permitted for office user = 92% of 4,920 f.c. = 4,526 f.c.

Floor space equivalent of 4,526 f.c. taking height at 9 ft. ... ... = 503 f.s.

Floor space used for storage purposes ... ... = 450 f.s.

Therefore, the proposed change of use is within the tolerance.

(1) *Value with the benefit of planning permission*

	£	
Upper floors: Total exclusive rents	= 410	
Ground floor: Office	150	
Add: 450 f.s. at 4s. per foot	90	
	650	
Deduct		
External repairs, etc. = say 15%, say ...	90	
Estimated net rent	£560	
Y.P. perp. at 5½%	18	= say £10,000

(2) *Value without the benefit of planning permission*

	£			
Upper floors (as before)	410			
Ground floor Office (as before)	150			
Add: 450 f.s. storage space at 1s. ... =	22	10	0	
	582	10	0	
Deduct: External repairs, etc., say ...	90	10	0	
net	£492			
Y.P. perp at 5½ %	18	= say		£8,850
Compensation payable,				£1,150

In the foregoing example it will be appreciated that the calculation to arrive at the compensation payable does, in fact,

resolve itself into the difference between the value of the tolerance for office user and for its restricted use as storage space. In practice, therefore, it will not be necessary to include the factors common to both valuations.

Example 3

The inability of securing adequate accommodation in London induced a business house to purchase a country mansion with approximately 10 acres for use as office premises. Access is by way of a long gravelled drive at the entrance of which is a small two-storied lodge which has been disused for some years and is now in a somewhat dilapidated condition. The accommodation, however, is good, comprising approximately 600 f.s. on each floor.

Its last known use was that of a dwelling-house for the lodge-keeper and family, but the cubic capacity of the mansion is such that it would provide sufficient tolerance to permit of a change of this use to that of offices. The company now wish to convert the lodge into a reception office, and have found, on application, that planning permission has been refused and the appeal disallowed.

As office premises, the mansion is worth £20,000 and it is estimated that the value of the lodge for a similar user, after repairs and alterations, would be £3,000.

Valuation

(1) *Value with the benefit of planning permission*

	£	£		£
Mansion, say		20,000		
Lodge—office user	3,000			
Less: Alterations and repairs ...	1,750	1,250	=	21,250

(2) *Value without the benefit of planning permission*

Mansion (as before)		20,000		
Lodge—existing use	2,250			
Less: Repairs and improvements ...	1,500	750	=	20,750
		Compensation payable,		£500

Example 4

Your client is the freeholder of a wharf having a canal frontage of 200 feet and a total site area of 30,000 f.s. The capital value of this site, free of buildings, is estimated at 3s. 4d. per foot. At the present time, covered storage space is provided by six sheds constructed of brick with corrugated asbestos roofs, each measuring 40 ft. by 20 ft. and having a

total cubic capacity of 96,000 f.c. It was found that this coverage was insufficient for the volume of perishable commodities being handled and an application was made for the erection of a further building of similar construction but measuring 30 ft. by 30 ft. with a height of 10 feet. Whilst it is evident that no difficulty would have been experienced in securing a licence, the local planning authority has refused permission on the grounds that the immediate area is predominantly residential, and it appears to be their intention to restrict further industrial development.

Your appeal to the Minister has been refused.

Advise your client as to the claim to be submitted under s. 20.

The permitted tolerance under Part II of Sched. III is 10 per cent. of the total cube of the existing buildings, amounting to 9,600 f.c.

The cubic capacity of the proposed building is 9,000 f.c. and it is, therefore, within the tolerance.

Valuation

(1) *Value with the benefit of permission*

		£
(a) *Existing sheds*		
Total floor space 800 f.s. × 6 = 4,800 f.s. at 2s.	= £480	
Y.P. perp. at 7%	14.3 =	6,864
(b) *Proposed shed*		
Floor space 30ft. × 30ft. = 900 f.s. at 2s. ...	= £90	
Y.P. perp. at 7%	14.3	
	£1,287	
Less: Building costs 9,000 f.c. at 2s. ...	900 =	387
(c) *Land for open storage*		
30,000 f.s. less 5,700 f.s. = 24,300 at 3s. 4d.	=	4,050
	say,	11,300

(2) *Value without the benefit of planning permission*

(a) *Existing sheds as before*	£6,864	
(b) *Land for open storage*		
30,000 f.s. less 4,800 f.s. = 25,200 at 3s. 4d.	= £4,200 =	11,064
Compensation payable		£236

Apart from the six cases in Part II of Sched. III when compensation can be claimed under s. 20, compensation for the depreciation of an interest in land can also be claimed under s. 22 for the modification or revocation of a planning

permission granted either under this Act or under previous law which has been preserved under this Act. It will, however, become payable only in those cases where a development charge has been paid or where the development is exempt from a charge because of any provision in Part VIII. A typical example of such a provision would be that of land certified as dead-ripe under s. 80 or that of an unfinished building under s. 78. It will, however, be remembered that the statutory power of modification or revocation applies in the two following cases :—

(a) Where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed and

(b) Where the permission relates to a change of use of any land at any time before the change has taken place, providing that, in the case of building or other operations, the modification or revocation does not affect works already carried out.

Apart from the compensation payable in respect of the foregoing, abortive expenditure on plans can be recovered and also other expenses provided they were incurred after the grant of planning permission. Moreover, the developer concerned is entitled to serve a " purchase notice " under s. 19 if the revocation or modification has the effect of rendering his land incapable of beneficial use, but it should be noted that any compensation paid in respect of abortive expenditure will be deducted from compensation payable either under s. 20 or under s. 19.

Example 5

In 1947 the claimant purchased a plot of land fronting the river, with the intention of building a small restaurant with tea gardens. In November, 1947, plans were prepared and deposited for by-law and planning approval and in December, 1947, interim development permission was granted. In July, 1948, a building licence was issued, but, within the following month, the claimant received notification that planning permission had been revoked. An appeal was made to the Minister, but he confirmed the council's decision. Between the date of the grant of permission and its revocation, the claimant had instructed a firm of landscape gardeners to prepare a layout and certain work had actually been carried out under his supervision, at a cost of £30. The only building operations executed, consisted in the digging of trenches for

foundations but a certain quantity of building materials had been deposited on the site and the builder's account had been rendered for a total sum of £50. What items can be included in a claim for compensation under s. 22?

Answer

In so far as interim development permission was granted since July 22, 1943 (the date of the Royal Assent to the Town and Country Planning (Interim Development) Act, 1943), it will be preserved under s. 77 as if it had been granted under Part III of the Act of 1947. The claim will, therefore, include any abortive expenditure or any other loss or damage directly attributable to the revocation of planning permission, but only in so far as that loss, damage or expenditure was incurred after the grant of interim development permission. In this case, therefore, the claim would include not only the accounts submitted by the builder and the landscape gardener but also a sum in respect of the claimant's own services in the supervision of the garden lay-out. It is interesting here to note that a claim in respect of loss of profits would, no doubt, be rejected in accordance with the principle in *Halford* v. *Oxfordshire County Council* (1952) 2 P. & C. R. 358.[1]

It has been seen that compensation becomes payable under section 22 in the cases of revocation and modification of permission under section 21 where the development permitted has not been carried into effect.

The provisions of section 26 likewise give the local planning authority the power to alter or to secure the removal of any building or to modify or stop any use even though there is no contravention of planning control. The distinction between this section and section 21, lies in the fact that in the former case the permitted development has not been carried into effect, whilst, in the latter case, the development is present. This power, which may be exercised notwithstanding the fact that planning permission has been granted under this Act or a previous enactment, will be demonstrated in those cases where the building or its use is not in accordance with present-day planning requirements.

In view of the fact that the order will affect a non-contravening user, compensation will become payable under section 27 not only for the depreciation of the interest in the land due to the order, but also for any expenses incurred in complying with it.

[1] Noted [1952] J.P.L. 158.

Here again, the claimant has the alternative of serving a "purchase notice" under section 19, if he can show that the order under section 26 makes his land incapable of reasonably beneficial use.

Example 6

A freehold shop and upper part, which has been established for a number of years, comprises the only business premises in a fair residential road. The property was originally designed as a dwelling-house and its reconstruction took place as the result of a lack of adequate shopping facilities within the immediate vicinity. The area has, however, been steadily developing over a course of years and there is a local shopping centre established within a short distance. The owner has built up a sound business and the average net profit over the last five years, after charging interest on capital, proprietor's remuneration and a rent of £150 p.a., amounts to £400. Trade fittings are valued at £200 and stock at £1,000. The local planning authority has now served a notice for the discontinuance of its use as a shop and have indicated that they are unable to offer alternative premises. It is estimated that when works of reconversion are completed, the vacant possession value of the premises as a house would be £1,800. Calculate the compensation due.

(1) *Value of existing premises*				
Estimated rent on f.r. lease		150 p.a.		
Y.P. perp. @ 5½%		18		
		£2,700		
Add:				
1. *Extinction of trade*		£		£
Net profit	£400			
Y.P.	3 =	1,200		
2. *Forced sale of stock*				
Loss, 33⅓% of £1,000, say		350		
3. *Trade fittings*				
Loss on sale, say		100		
				4,350
(2) *Value as dwelling-house*				
Estimated at		1,800		
Deduct				
Cost of conversion, ...	£500			
Fees, say	25	525		1,275
		Compensation payable		£3,075

Progress of Development Plans

(*Continued from p. 506, ante*)

Plans Submitted to the Minister

The following is a continuation of the list of plans submitted to date (September 10, 1952). Any objections should be sent to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before the closing date indicated.

104. Isles of Scilly County Council.
Submitted to Minister: July 28, 1952.
(*London Gazette*, August 19, 1952.)
Closing date for objections: October 1, 1952.

107. Cumberland County Council.
Submitted to Minister: June 30, 1952.
(*London Gazette*, August 12, 1952.)
Closing date for objections: September 1, 1952.

108. Merthyr Tydfil County Borough Council.
Submitted to Minister: August 14, 1952.
(*London Gazette*, August 19, 1952.)
Closing date for objections: September 26, 1952.

109. East Riding of Yorkshire County Council.
Submitted to Minister: June 27, 1952.
(*London Gazette*, August 19, 1952.)
Closing date for objections: September 30, 1952.

110. Derbyshire County Council.
Submitted to Minister: August 15, 1952.
(*London Gazette*, August 19, 1952.)
Closing date for objections: October 28, 1952.

111. Cornwall County Council.
Submitted to Minister: August 27, 1952.
Closing date for objections: October 27, 1952.

112. Isle of Ely County Council.
Submitted to Minister: August 28, 1952.

Dates of Local Inquiries

81. Dorset County Council.
Local inquiry : February 3, 1953.

84. Soke of Peterborough County Council.
Local inquiry : October 14, 1952.

Plans Approved by the Minister

The development plans of the following local authorities have now been approved by the Minister and have become operative as from the dates indicated. Any application to the High Court to question the validity of a plan or any provision therein must be made within six weeks from the date when notice of approval of the plan was first published.

9. Blackburn County Borough Council.
Approved (*with modifications*) : August 29, 1952.

Book Reviews

Sale of Land. By E. F. George, LL.B. (Sweet & Maxwell, Ltd. 542 and xxxiii pp. £3 3s.).

As might have been expected from the pen of the new editor of *The Conveyancer and Property Lawyer*, this new book is an excellent desk book for the conveyancer—in it the learned author follows through the transaction of a sale of land step by step in a most careful and authoritative manner, giving authorities for his statements of law, and wise advice on points of practice. The book does not profess to take the place of *Williams on Vendor and Purchaser*, as no attempt is made to deal with every abstruse point that may arise, nor is every case that has been decided discussed, but the hope expressed by the author that "all matters met with in the ordinary practice of purchase and sale are fully covered," seems to have been fulfilled.

The most refreshing feature of the book is the manner in which it deals with the changes made by the property legislation of 1925, and by the Town and Country Planning Act, 1947. At last a conveyancing work of major importance has put the pre- and post- 1925 law into a proper perspective, by discussing in detail first the modern law, and then dealing in outline with the pre-1925 law, in so far as is necessary for perusing the older titles. Planning matters are discussed throughout the book, in their appropriate places, and due attention is paid to the important matters of inquiries before contract and inquiries of local authorities—although the narrative on pp. 150 to 152 might have been expanded somewhat on the latter subject, as we suspect that in practice many solicitors do not pay sufficient attention to these matters, or to

[*continued on p.* 588

Lands Tribunal Decisions[1]

Claims for Loss of Development Value

White Hall Hotels (London), Ltd. v. Central Land Board[2] (Ref. CLB/622/1951. August 15, 1952). This was an appeal against a determination by the Central Land Board that the development value in the leasehold interest in hotel premises at Bloomsbury Square, London, was £6,550, the Board's original determination having been that there was no development value. The interest as at July 1, 1948, was for an unexpired term of $22\frac{1}{4}$ years from March 25, 1947, at a rent of £400 p.a.

The restricted value was agreed to be £25,000. The unrestricted value was placed at £65,000 by the claimants and £31,550 by the Central Land Board, based on the prospects of changing the use of the premises to offices. Detailed valuations were submitted by each side, and expert evidence given as to the demand in 1947 for office accommodation in this locality, and the extent to which Defence Reg. 68CA would have deterred prospective purchasers.

The Tribunal (JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.) considered that taking into account the possibility that change to office use might be prevented under the Defence Regulation, a purchaser might have been expected to pay £47,500. Under s. 61 (7) a deduction should be made if the development upon which the unrestricted value depended would involve loss to the owner in the nature of disturbance, and in this case such loss was the difference between the value of the furniture and equipment as part of the going concern and their value if removed, a reasonable figure being £1,500.

The unrestricted value was accordingly determined to be £46,000, and hence the development value £21,000.

Appeal allowed, with costs on the High Court scale.

Hibbert v. Central Land Board (Ref. CLB/832/1951. August 15, 1952). This was an appeal against a determination

1 Full reports of these cases will be published in *Planning and Compensation Reports*.

2 Counsel: *H. Heathcote-Williams, Q.C.*, and *J. T. Plume*, instructed by Edwin E. Clark & Son, for the appellants; *Douglas Frank*, instructed by the Treasury Solicitor, for the Central Land Board.

by the Central Land Board that there was no development value in some 20 acres of agricultural land being part of Pound Farm, Grimley, Worcestershire.

The claimant originally claimed that the development value based on the prospects of building development was £1,200, but at the hearing submitted a valuation which gave the development value as £490 (restricted value £2,400, unrestricted value £2,890). The District Valuer put both restricted and unrestricted value at £2,400.

The Tribunal (JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.) held that the saleable value of the land for building development was £2,660, and that from this must be deducted £250 in accordance with s. 61 (6), on account of severance and injurious affection to the remainder of the farm of which it formed part. There was accordingly no development value for the purposes of Part VI of the Act.

Appeal dismissed.

Bourne v. Central Land Board (Ref. CLB/899/1951. August 15, 1952). This was an appeal against a determination by the Central Land Board that there was no development value in premises at Lambeth, London, comprising a range of brick lock-up garages, a two-storey brick storage building and a workshop, with a yard and a right of way 60ft. x 8ft. from the road and another yard formerly the site of two houses.

The property had been purchased by the appellant in June, 1949, together with the Part VI claim, for £2,000, there being a lease due to expire in August, 1949. He had let them for one year at £250 and then sold them for £2,550, retaining the Part VI claim. The purchaser re-sold for £3,250 before completing his purchase.

The appellant claimed that the development value was £1,750 (unrestricted value £4,300, restricted value £2,550). The District Valuer arrived at £2,640 for both restricted and unrestricted values.

The Tribunal (JAMES L. MILNE, ESQ., F.R.I.C.S., F.A.I.) held that there would have been a wider circle of prospective purchasers on the basis that the provisions of the Act of 1947, other than ss. 61 and 62, had not been passed, than on the assumption that planning permission for development other than Third Schedule development would not be granted, and accordingly there was development value. Having regard to the lease to which the freehold interest was subject the

unrestricted value was assessed at £3,000 and the unrestricted value at £2,550, and the development value was therefore £450.

Appeal allowed, with two guineas costs.

Compensation for Compulsory Purchase

Remnant v. London County Council[3] (Ref. 64/1951. August 25, 1952.) This was a claim for compensation for the compulsory purchase of a war-damaged dwelling-house at Aldringham Road, Streatham Park, London.

The claimant, a chartered surveyor who had conducted his professional practice from this residence, claimed £6,735 plus legal costs in the purchase of alternative accommodation, the amount claimed including £1,000 for loss of professional earnings and an agreed figure of £60 for removal expenses. The acquiring authority's valuation amounted to £3,911, with disturbance of professional practice assessed at £350.

The Tribunal (J. P. C. Done, Esq., F.R.I.C.S.) first examined the value of the acquired property by the residual method adopted by the claimant's valuer, *viz.*, for conversion to three flats, with rentals estimated having regard to comparable existing flats (claim, £5,675), although it was stated that the residual method of valuation is not relevant to an open market transaction. A contention by the acquiring authority that the rentals would have been limited as a condition of the necessary licence to do the work of conversion was accepted by the Tribunal in relation to the two upper flats envisaged by the scheme, but not in relation to the ground floor flat which it was assumed would be occupied by the purchaser. It was not accepted that the consent required from a person entitled to the benefit of a restrictive covenant would reduce the value of the property; and the deduction to be made in respect of redecorations at the end of the term of the s. 52 notional lease, in addition to an agreed figure of £964 for conversion (the war-damaged premises having been notionally reinstated under s. 53) was held to be £60.

With regard to the acquiring authority's valuation (£3,911), made by the comparative method, the Tribunal stated that prices accepted by vendors under the threat of compulsory powers are not reliable evidence of value in the open market and even where such powers are not used an

[3] Counsel: *J. Ramsay Willis*, instructed by the Solicitor to the London County Council, for the acquiring authority.

owner approached by a public authority may be affected by the knowledge that they exist. Having regard to the comparable cases cited by the acquiring authority and allowing for the notional lease, the compensation for the premises was assessed at £4,600.

With regard to the claim for disturbance, the Tribunal held that the rule applied in the *Mapstone Case*[4] did not apply here since the claimant's evacuation of the premises had not, as in that case, minimised the compensation payable for disturbance, and the claim for legal costs for alternative accommodation was rejected. On the claim for loss of goodwill and professional earnings there was no restriction to the market value of the claimant's local connections and the compensation, being the loss from the sacrifice of potential business, was assessed at £500.

With the £60 agreed for removal expenses the total compensation was accordingly £5,160.

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[4] *Mapstone* v. *Bristol Waterworks* (1951) 2 P. & C.R. 1, noted at [1951] J.P.L. 299, and commented upon at [1951] J.P.L. 451, and *ante*, p. 550.

Correspondence

To the Managing Editor,
Journal of Planning Law.

Sir,

Development—Resumption of Former Use of House

Mr. Linecar's letter ([1952] J.P.L. 522) involves consideration of what constitutes a temporary use. I would not go so far as to say that there must be clear evidence of intention that the use should be temporary at the time of its inception. A use contravening interim development control under the 1932 Act (as amended by the 1943 Act) could always be challenged under s. 13 of the earlier Act (without limit of time) and being open to enforced stoppage lacked from its commencement the certainty of a permanent use.

My references to earlier planning legislation were directed to the point of establishing whether the former use could be resumed having regard to proviso (i) to s. 12 (5). If an existing use is a temporary use then the benefit of s. 12 (5) (*a*) is available even if the time for proceeding against the existing use under s. 75 (1) has expired.

Yours truly,

Eastbourne. W. A. Leach.

To the Managing Editor,
Journal of Planning Law.

Sir,

Ownership of Real Property

The position of a landowner would seem to be worse than is indicated by Messrs. Mullings, Ellett & Co. in their letter (*ante*, p. 523). Is it not this; that an acquisitive developer can approach any owner of any property, name a price round about "existing use" value and, even if the owner has no wish to sell at all, then put the machinery of the section into action without further reference to or knowledge by the owner? It may be argued that the section will only be resorted to "reasonably"; but where there is power, there is danger. The position is not essentially bettered where the owner yields to the developer under the threat of the "big stick" contained in the section.

Mr. Heap, in the same issue, points out that it is not new under the Act of 1947 that planning permission can be obtained without an owner's knowledge, and suggests that the Act has improved matters by providing that applications for planning permission shall be registered. But, Sir, a landowner cannot be, daily, searching registers or applying for "official searches." Further, with the passing of the 1947 Act and its powers and sanctions, the impact of "planning" upon the individual has become immeasurably heavier, and what might have been reasonable before is now so no longer. The only just course, it is submitted, is that, where the applicant for planning permission is not the landowner, the latter shall be personally notified and given the chance of objecting, before permission is granted. This may not be administratively convenient; but is convenience everything and justice nothing?

Yours faithfully,

Bristol. J. W. G. Heaven.

*Notes of Planning Decisions**

Erection of House on Back Land

The following is an extract from the letter of the Minister of Housing and Local Government dated May 26, 1952, dismissing an appeal against the refusal of the Hendon Borough Council to permit the erection of a dwelling-house at the rear of No. 22 Farm Road, Edgware. Permission was refused for the reason that the proposed development would be prejudicial to the amenities of the adjoining locality.

"The site is bounded by the gardens of seven houses and the placing of a house upon it, as proposed, would mean that the house would be only some 8 feet distant from the garden boundary of No. 22 Farm Road, and about 2 feet from the rear boundaries of Nos. 68 and 70 Deans Way. In these circumstances, it is thought that the proposed development, which has aroused some opposition from neighbouring residents, could not fail to affect adversely the amenities of the area."

[By courtesy of the Town Clerk, Hendon.]

Erection of Houses Outside Village

The following is an extract from the letter of the Minister of Housing and Local Government dated May 29, 1952, dismissing an appeal against the refusal of the Cambridgeshire County Council to permit the erection of 12 houses and the construction of a cul-de-sac at Duck End, Girton.

"Apart from possible difficulties over access, he thinks it undesirable that, when there is ample land for sale with all services available within the normal boundary of the village, housing development should extend on to badly drained open land outside the village, which, if drained, could probably be put to agricultural use along with adjoining land."

[By courtesy of the County Planning Officer, County of Cambridge.]

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* The Managing Editor desires to express his thanks to those who have been kind enough to send to this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

Erection of Cottage on Smallholding in Green Belt

The Minister of Housing and Local Government has announced his decision in an appeal against the refusal of Orpington Urban District Council to permit the erection of a cottage or bungalow on land at North End Lane, Downe.

The appellant had stated that he worked the site as a smallholding and wanted the cottage for the use of his full-time employee. The appeal site is in the Metropolitan Green Belt where, the Minister agrees with the Council, further development should normally be permitted only if essential to agriculture or if it is infilling vacant plots within the boundaries of an existing community.

The appellant's proposal is not infilling, and the Ministry of Agriculture and Fisheries does not support it on agricultural grounds. The Minister considers, therefore, that, while he sympathises with the appellant's difficulties, he has no option but to dismiss the appeal.

[By courtesy of the Public Relations Officer, Kent County Council.]

Erection of Temporary Dwelling-Hut in Garden of House

The following is an extract from the letter of the Minister of Housing and Local Government dated June 30, 1952, dismissing an appeal against the refusal of Hampshire County Council to grant planning permission for the erection of a temporary dwelling-hut in the garden of a house at Marine Walk, South Hayling.

The appellant had stated that he wished to supplement his income by letting his house during the summer months during which time he would live in the hut.

"South Hayling is both a popular holiday resort and a residential seaside town in which many retired people have settled. Its buildings do not include large hotels and are mainly small dwellings, with many bungalows occupied only in summer, a number of holiday camps and in one section of Eastoke a number of rather makeshift chalets and small temporary huts and shacks. There is clearly a danger that the general character of South Hayling might be prejudiced if development of this kind were allowed to spread indiscriminately among the better permanent houses and he fully appreciated the desire of the Council to maintain the character of those parts where the development is mainly of a permanent and good type.

"There would be no objection to the letting of rooms for holiday accommodation but the addition, even temporarily, of sub-standard dwelling huts within the curtilages of permanent houses would be likely to frustrate the Council's policy and lead to deterioration. In these circumstances the Minister has come to the conclusion that the Council's decision must be supported and the appeal dismissed."

[By courtesy of the Clerk of the Havant and Waterloo Area Development Sub-Committee.]

Erection of Pre-fabricated Dwelling-Hut in Residential Area

The following is an extract from the letter of the Minister of Housing and Local Government dated June 30, 1952, dismissing an appeal against a refusal of Hampshire County Council to grant planning permission for the erection of a pre-fabricated dwelling hut on land at Southwood Road, South Hayling.

"The Minister fully appreciates the desire of the Council to maintain the character of particular parts of the development area. What is right in one part of it may be quite wrong in another. On the other hand, it is important in the general interest that undeveloped plots in an already largely developed area should not remain useless and often unsightly, but be used for residential or holiday purposes, thus reducing the pressure on agricultural land elsewhere. Even a simple structure such as the hut now in question may often be quite satisfactory in appearance and indeed pleasant, if framed by suitable trees or shrubs and a well-laid out and tidy garden. On the other hand huts of this nature are likely, even if only granted a temporary permission in the first place, to last a considerable time and delay the development of the site in other ways, and it is also important to bear in mind that permanent houses and huts each in themselves reasonably pleasant to look at may, when side by side, appear incongruous and unsightly and thus prejudice the character of the surroundings.

"In the light of these considerations the question whether a hut of the kind proposed is appropriate may often depend as much on the circumstances of the particular site and those close to it as on the character of the larger area around it. The Minister notes that the site of the present appeal lies immediately opposite an area already partly developed and likely soon to be completely developed with permanent houses of a reasonably good design and having some uniformity of

character, and he has come to the conclusion that it is undesirable that buildings of a totally different kind should be built on the opposite side of Southwood Road rendering it unlikely that permanent houses will be built on the plots in question for many years to come. While it is desirable that some use should be made of the site meantime, and it is likely to be much better kept if it is so used, it would be better if it were used in a manner (such as for a caravan during the summer season) which could be more easily terminated when permanent building becomes practicable. In these circumstances the Minister has decided to dismiss the appeal."

[By courtesy of the Clerk of the Havant and Waterloo Area Development Sub-Committee.]

Stationing of Caravan on Site for Permanent House

The following is an extract from the letter of the Minister of Housing and Local Government dated June 21, 1952, dismissing an appeal against the refusal of the Hampshire County Council to grant planning permission for the stationing of a caravan on land at Marine Parade, Hayling Island.

"The site is a conspicuous one on the central section of the sea front; there are substantial permanent houses on a number of neighbouring sites and this site ought to be similarly developed as soon as possible. While it is desirable that such sites should not be left merely useless and even derelict during present difficulties of building, it is important that nothing should be done on this particular site which would, in practice, be liable to delay building or be seriously out of keeping with the surroundings. Occasionally in such cases where an applicant has no other home and is likely to be able to build quite soon, permission is granted for a residential caravan for a short while meantime. It is also sometimes reasonable to allow caravans for purely holiday use to be kept on such a site for a somewhat longer summer period than the 28 days permitted by the General Development Order, 1950, provided it is removed by the end of the season. Neither of these special circumstances, however, applies to the present case, where the proposal is to keep a caravan on the site all the year round for occasional use. The Minister is satisfied that the use of the site in this way would be seriously out of keeping with the surroundings, and that no special case has been established for it."

[By courtesy of the Clerk to the Havant and Waterloo Area Development Sub-Committee.]

Establishment of Garage and Petrol Filling Station

The Minister of Housing and Local Government has allowed an appeal against the refusal of Kent County Council to permit the establishment of a garage and petrol filling station on land at The Hill, Littlebourne.

Permission was refused on the grounds that there were sufficient facilities of this nature in the area and that a garage and filling station on this site would be detrimental to the amenities of the locality.

The Minister notes that a hedge and a row of cottages tend to screen the site from the road and that the nearest house, apart from the cottages, is some distance away. None of the people living nearest objected to the appellant's proposals. The Minister does not, therefore, consider that the proposed development would adversely affect amenity.

Concerning the first ground for refusal, the Minister considers that the evidence of the adequacy of the existing facilities was so conflicting that refusal on this ground alone would not be justified.

After consulting the Minister of Transport, the Minister has come to the conclusion that the proposal would not be harmful to highway interests provided properly constructed " in " and " out " accesses are made and plenty of room allowed for cars to manœuvre. In allowing the appeal, he also makes the condition that the layout and external appearance of the buildings shall be agreed by the Council or by himself on appeal.

[By courtesy of the Public Relations Officer, Kent County Council.]

Continued Use of Shop for Light Industrial Use

The following is an extract from the letter of the Minister of Housing and Local Government dated June 17, 1952, allowing an appeal against the refusal of the Hendon Borough Council to consent to the continued use of shop premises at Greyhound Hill, Hendon, for the making of ladies' toilet requisites, rainwear and aprons.

" For your Council it was stated that the area is intended to be shown in the County development plan as a shopping and business area. Any intrusion of industry, which would be wrong in principle, should be resisted.

" The Minister has considered with care all the facts and representations before him. The use under appeal is not

injurious to amenity. It is noted that several of the shops in this shopping centre are not devoted exclusively to retail sales; and that a shop adjoining the appeal premises is used for repair work in conjunction with retail refrigerator sales. These combined uses are, however, not obtrusively alien to the shopping centre. In the circumstances the Minister does not think that he could reasonably support the Council.

"Accordingly the Minister has decided to allow the appeal and he hereby grants permission for the continued use of the premises in question as applied for, subject to the condition that the premises shall not be used for any other purpose, including any other purpose within Classes III or IV of the Schedule to the Town and Country Planning (Use Classes) Order, 1950."

[By courtesy of the Town Clerk, Hendon.]

Motor Car Sales, Skittle Alley and Advertisements in Rural Area

The following is an extract from the letter of the Minister of Housing and Local Government dated April 29, 1952, following three appeals against the refusal of the Wootton Bassett Rural District Council to grant permission—(1) for the erection of a marquee for use in connection with the weekly sale of motor cars and motor accessories; (2) the use of a skittle alley for fortnightly sales of furniture by auction; and (3) the erection of two painted advertisement boards—all on land situate at the Wheatsheaf Inn, Wootton Bassett Road in a locality entirely agricultural in character.

"The Minister has given careful consideration to the representations before him. In his view the traffic objections are not such as to justify a refusal of permission in view of the precautions taken by the appellants in the provision of car park attendants, nor that the size and character of the advertisement boards are such as to create any serious threat to road safety or local amenity. The Minister is, however, in agreement with the Council that the area is predominantly agricultural in character and the permanent establishment of commercial uses of this type should therefore be the subject of careful consideration. On the other hand the applications relate to intermittent uses including the use of temporary structures not differing markedly in degree from the limits of temporary development and uses permitted by virtue of article 3 and Class IV of Sched. I to the Town and Country Planning (General Development) Order, 1950, and while the

Minister would not be prepared to agree that an unlimited grant of permission should be conceded at this stage, he considers that the development might be allowed for a period of one year in the first instance, leaving any extension of that period to be dealt with in the light of further experience."

[By courtesy of the County Planning Officer, Wiltshire County Council.]

Resumption of Former Use as Slaughter-house, and Structural Alterations

The following is an extract from the letter of the Minister of Housing and Local Government dated June 21, 1952, allowing an appeal against the refusal of Hampshire County Council to grant planning permission for structural alterations to a building on land at Lovedean, in connection with its proposed use as a slaughter-house.

"It was stated at the inquiry that the building was last used as a slaughter-house for sheep, calves, pigs, etc., by a local butcher; the two rooms within the main part of the building being a killing room and a cooling room. The lean-to provided lairage and fodder store. The use is said to have begun in 1928 and to have continued until 1939 when slaughtering was centralised for the purposes of food control.

"The appellant proposes to resume this use and will slaughter horses intended for human food, and the alterations proposed consist of the reconstruction of the existing wooden lean-to in permanent materials to provide stabling, and the addition of a w.c. and sink. The alteration of the main structure will be the provision of a new sliding entrance door and certain other minor alterations. A new concrete path is to be constructed from the entrance gate in Wecock Lane leading to the killing room and a width of paving around the remainder of the building.

"On the evidence before him the Minister is satisfied that the last use of the building was as a slaughter-house and that an application for planning permission is not necessary for the resumption of that use. He has considered the details of the rebuilding and other operations now proposed. These are works considered essential by the local sanitary authority if the building is to be used as a slaughter-house for food for human consumption, and the Minister can find no valid objection to them on planning grounds."

[By courtesy of the Clerk of the Havant and Waterloo Area Development Sub-Committee.]

Practical Points

All questions for consideration should be addressed to "The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of replies.

386. *Claims on £300 million fund—land compulsorily acquired*

What is the meaning of s. 91 (3) of the Act of 1947 in a case where s. 53 applies?

The owner of a badly blitzed site in the City of London was refused consent to redevelop the site owing to street widening arrangements and served a purchase notice under s. 19 of the Act which resulted in the compulsory acquisition of the site by the City Corporation.

There were about eight separate buildings on the site, before war damage, with very little inter-communication, and of these five were cost of works cases and three value payment cases. The compensation so far as the cost of works cases are concerned was dealt with under s. 53 of the Act on the basis that the buildings had been reinstated. The three value payment cases were dealt with at restricted site value.

A s. 58 claim for loss of development rights had been submitted and the District Valuer says that *so far as the cost of works cases are concerned*, for the purpose of s. 58 as well as s. 53 it has to be assumed that the buildings have already been reinstated, so that what we are dealing with is not a site but a site with re-erected buildings in full occupation. All that can therefore be claimed (according to the District Valuer) is (a) any more profitable user than the user before war damage, and (b) the addition of any tolerance that it was practically possible to add without demolishing and rebuilding the buildings with stronger walls to support the added tolerance. The whole of the ground floors were covered with buildings so that any tolerance has to be added to the upper floors if it is used at all.

The previous user of the site was nothing like the most valuable.

Section 91 (3) of the Act says that "unrestricted values" shall be calculated in accordance with the provisions of s. 53 of the Act *subject to any necessary modifications*. The limit of necessary modifications to which the District Valuer is prepared to go is (a) to grant the tolerance subject to its being added after the buildings are completed, and (b) to permit the change of user of the notionally reinstated buildings if there is a more profitable user than the previous one.

Would the words "subject to any necessary modifications" extend to saying that what has to be valued is (a) for restricted value, the value of the site with the limitation that only the old development plus 10 per cent. would be permitted, and for the old user only, and (b) for unrestricted value the value of the whole site for its most profitable redevelopment both physically and in regard to user? [H. & B.]

ANSWER

The purpose of s. 91 (3) is that where a building has been acquired as notionally reinstated the Part VI claim shall be based on the presumed existence of the same notional building.

The notional building comes into presumed existence on the date of service of the notice to treat and one has to value the Part VI claim with foreknowledge of that "fact." Whether the "fact" alters valuations of loss made as at an earlier date is debatable: the loss at the earlier date is not altered because subsequently somebody stupidly replaces a building inadequate to the site. However, the words used being inept one has to try to give reasonable effect thereto, and I think the Part VI claim must be founded on the possibility of the enlargement and change of use of a building presumed to be standing as from the date of the notice to treat. It may, of course, be a "necessary" modification under s. 91 (3) (*a*) to shift the date of presumed erection of the notional building from the date of the notice to treat to the appointed day, which would avoid the assumption of subsequent stupidity, but I do not think that is a correct interpretation.

I presume that in (a) of the sixth paragraph of the inquiry the word "tolerance" should read "unrestricted enlargement," *i.e.*, the unrestricted value must include the right to make the maximum practicable enlargement permissible under earlier planning control whilst the right to exercise the Sched. III tolerance would be included in the restricted

value. The question in either case is, of course, whether such an enlargement would be economic having regard to the rental likely to be obtained and the cost of the work including any necessary strengthening of the lower part of the building, and possibly the loss of rent from other parts of the building during such strengthening works, for I agree that the enlargement must be visualised as added to the building as reinstated.

The hypothetical lease of the notional building is, of course, also involved (s. 52).

In any event, I do not think the construction suggested by the questioner is tenable. It amounts in effect to adding a proviso to s. 91 (3) (*a*). "Provided that this paragraph shall not apply to any valuation to be made under s. 61 of this Act." [W. A. L.]

387. *Dead ripe land—effect of restrictions on building*

The owner of a corner house with a long garden possesses a s. 80 certificate for the erection of a dwelling-house at the bottom of the garden with a frontage to the side road. No condition is attached to the certificate as regards time within which the building is to be commenced.

By-law approval was given in 1946, but, owing to the fact that a licence is not yet granted, no work has been commenced on the building. Under s. 66 of the Public Health Act, 1936, if work has not been started within three years from the date of the deposit of plans, the local authority may serve notice before work starts declaring that such approval is of no effect.

The local authority, under s. 15 of the Act of 1936, have entered and laid a public sewer through the land under the site shown on the approved plans of the building. They now contend that the owner is precluded from erecting the dwelling over the line of the sewer and advance arguments of an engineering nature why it should not be done.

(1) What is the effect of the s. 80 certificate in the above case? Does it preclude the local authority from withdrawing approval under the by-laws and if so would it also prevent action by the authority or other person under s. 65 (5) of the Act of 1936? In other words is it an irrevocable authority to its owner to do the work in accordance with the approved plans?

(2) If the local authority can so act, and the owner has to submit fresh plans, will the s. 80 certificate which now covers the approved plans extend to give him the same rights?

(3) Assuming the s. 80 certificate continues in force, will it be valid after June 30, 1953, when the "share out" is due, or will he be paid like the others who have no such certificate? [J. P. W. C.]

ANSWER

(1) A s. 80 certificate does not exclude the power of revocation.

(2) Once issued the certificate is unaffected by the fact that by-law permission has lapsed. But by-law permission will be required and the difficulty arises that there is an effective certificate but no by-law consent in being for the development.

(3) The s. 80 certificate will be valid and there will be no payment from the global sum. Presumably the owner claimed compensation under s. 278 of the Public Health Act, 1936. [R. P. C.]

388. *Purchase notice—right to right of way over land*

A property comprises an old four-floor house of two rooms per floor on to the side of which an extension was added many years ago, comprising an archway entrance with three floors over. Each of the two top floors of the extension contained one large room communicating with the main building and the ground floor consisted of hall and w.c. On the rear garden stands a workshop, the only access to which is through the archway. Following war damage, many adjoining properties were demolished and also the archway extension, leaving the original house standing but damaged and vacant. Our clients, freeholders of the whole and in occupation of the workshop, now desire to repair the house and rebuild the extension. A direction under article 4 of the General Development Order, 1950, is in force.

If planning permission is refused can our clients serve a purchase notice in respect of the house and front land (excluding workshop) and demand the grant of a right of way to the workshop over the site of the archway entrance?

The only alternatives would seem to be a fresh planning application in respect of the old house only, and a purchase notice if this is refused, or being forced to leave the whole until such time as the local authority choose to take compulsory powers. The first may involve our client losing his war damage claim for rebuilding the extension as a subsequent

demolition of the old house by the council would remove the flank wall on to which the extension would require to be built, also the rooms over the archway would in themselves be useless. The second may mean waiting many years as the adjoining land is occupied by pre-fabs. [N. & S.]

ANSWER

There is no power on a compulsory acquisition under s. 19 or otherwise for the vendor to reserve a right of way.

A planning application might be made for permission to repair the original house, and if this is refused a purchase notice served in respect of that building and a suitable curtilage. If the purchase notice is confirmed the authority will acquire the original house as notionally reinstated and as regards the remainder application could be made under the War Damage Act, 1943, for a substituted value payment for the residue of the works of reinstatement.

The position might very well be discussed with the local authority and the Regional Office of the War Damage Commission. [W. A. L.]

389. *Claim for loss of development value—liability to income tax.*

Further to Practical Point No. 375 (*ante*, pp. 423–424): a builder with, say, an agreed near ripe claim on 12 acres will be liable to income tax on the actual amount received as compensation. Supposing he has as well an ordinary S.1 claim in respect of an additional 12 acres would the amount he receives as compensation in respect of this additional area be liable to tax? Would this also be regarded as a builder's stock in trade? I understand no tax will be payable on payments from the fund to landowners in respect of general S.1 claims and am wondering whether builders owning land would be treated similarly. [L. S. U.]

ANSWER

From a tax point of view it seems that this is purely a question of fact, whether the land is held for the purpose of the business, as a builder, or whether it is owned as a private investment. The answer to the first question depends upon the answer to the second. If the land was acquired by the builder for the purpose of building, or with future intention to do so, it would seem that it is stock in trade even although in the hands of a private investor it would be a capital asset.

If the builder has been in business for some time and has rendered accounts to the Inspector of Taxes showing the land as a business asset, it is not thought that there would be much doubt about the sums received under both heads being liable to tax. Although it is not impossible for a builder to prove that land (or buildings or other property) is held as a private investment though originally acquired for his business, the onus is much harder to discharge because in the normal way a builder deals in land as stock. If the Revenue contend that the amount of compensation is assessable as profits of the trade, the best course would be to appeal at least as far as the Commissioners, whose decision is unlikely to be reversed in the High Court as a question of fact.

There was a special arrangement regarding compensation received by builders with the Inland Revenue, but the date for election under such arrangement has now expired. [H. P.]

Book Reviews

(*continued from p.* 570)

the replies they receive to the standard inquiries they make on such matters as drainage, highways, etc.

On the vexed question, whether "use" is a matter of title, it seems that Mr. George would answer in the negative, holding the view that the permitted use need not be disclosed by a vendor on an open contract (see pp. 100 *et seq.*), but that the purchaser will be able to rescind if the authorised use has been misstated in the contract, or the property has been misdescribed. In the opinion of the learned author, from a conveyancing point of view, "structure" is on a different footing from use, and, therefore if a person is liable by reason of an enforcement notice to be compelled to alter the structure of the premises, this amounts to a "latent" defect, and as such should be disclosed by the vendor if he knows or ought to know of it (which means, presumably, if the notice has been served on him or is registered in the local land charges register). Similarly, it is suggested (see p. 62) that a vendor should disclose the fact of a "repairs" notice having been served under s. 9 of the Housing Act, 1936, but that a closing order under s. 12, *ibid.*, need not be disclosed, as the latter relates merely to "use" of the premises.

A few forms are included, at the ends of the Chapters to which they respectively relate, and most of these will be found useful in practice, but it might have been more convenient if these had all been placed together at the end of the book; some could well have been omitted (*e.g.*, the statutory epitomes of abstracts of title, the statutory form of conditions of sale, 1925, and the example of a contract given on p. 118). The book is very attractively produced, well indexed and the print and method of layout is pleasing and easy to follow. An essential addition to any serious conveyancer's library.

J. F. Garner.

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"Planning Law" Notes

The President of the Town Planning Institute, Sir George Pepler, speaking at the Institute's Summer School at Bangor, summed up the evolution of planning practice in this country in the phrase "born of housing, developed in amenity, and maturing in industry."

The public inquiry into the London County Council's development plan, which opened on September 29, must be one of the largest ministerial inquiries ever held. The number of objections totals nearly 6,300, and the Minister has classified the objections into separate groups, which will be heard separately. The grouping is set out on another page in this issue (*post*, p. 620).

The inquiry began at the Central Hall, Westminster, but was transferred on October 3 to the conference room at County Hall, S.E.1.

The Minister has advised a local authority that planning permission for the erection of a house should not be refused solely on the grounds of the unusual design of the house, except in a very rare case (*post*, p. 631). Planning authorities should be prepared, says the Minister, to encourage new ideas in design even though they appear to break with local tradition. We also include (at p. 632) another planning decision which gives further indications of the Minister's views on this question.

In another planning decision (*post*, p. 637) the Minister states that he is advised that where operations have already been carried out or a change of use already made, it is not open to him to give a determination under s. 17 of the Act as to whether development is involved for which planning permission is required. The reason for this is that s. 17 relates only to proposed operations and changes of use.

The power under s. 14 to grant planning permission for proposed development is extended to the granting of permission for the retention of buildings or works already constructed or carried out, or the continuance of a use already instituted,

by s. 18 (1), and it seems to be at least arguable that the somewhat vague phraseology of the latter part of that subsection requiring references to applications for planning permission to be "construed accordingly," similarly extends the scope of s. 17.

If the Minister's view is correct, there seems to be a gap in this respect in the general scheme of the Act.

In a recent article (*ante*, p. 501), Mr. Leach suggested that the liability to a fine under s. 24 (3) of the Act of 1947 might be a check by discouragement to the continuance of a contravening use in respect of which an enforcement notice had been served, but was not a restraint—the use could be continued if the (succession of) fines were paid.

A correspondent now points out that if there were a continued refusal to comply with an enforcement notice it is open to the Attorney-General to sue for an injunction on behalf of the authority concerned: *Att.-Gen.* v. *Ashborne Recreation Ground Co.* [1903] 1 Ch. 101; *Att.-Gen.* v. *Sharp* [1931] 1 Ch. 121.

The Ministry of Housing and Local Government have published a handbook entitled "The Density of Residential Areas" (H.M.S.O. 5s.), which deals with the problems of the amount of land required for different projects in residential areas, and in particular for housing.

In a foreword to the book the Minister, Mr. Harold Macmillan, states: "In putting out this book I am not intending to suggest that desirable standards must be cut; but rather that, with more flexible ideas about the use of terraces and with better layout, land can be saved without any sacrifice of desirable standards."

Chapter I deals with the general physical background of the subject. Chapter II relates the groundwork of Chapter I to the process of making a development plan for a town. The major problems likely to arise in connection with residential areas are summarised, together with the surveys and plans suggested or prescribed in the various regulations and circulars published by the Ministry. The regulations and circulars are discussed together with their application to the making of Town maps at 6in. scale and also to Comprehensive Development Area maps at 25in. scale.

Chapter III deals briefly with some density problems likely to arise in connection with the day-to-day administration of planning control. The cases are classified into groups, and some pertinent questions are suggested which should be asked in various kinds of cases before a decision is reached. The vexed problem of the application of average densities to individual sites is discussed.

The book concludes with a brief summary and appendices containing the Ministry's Schedule of Minimum Street Widths, details of permissible height indicators for testing the daylighting of residential buildings from block plans, and a list of definitions.

The question of whether a use has been abandoned when it has been discontinued for a period is sometimes a matter of great importance to a landowner, and is usually a matter of difficulty since each case will depend on its own facts. An interesting and important decision by the Minister on this question is included at p. 639, *post*.

Under C. L. B. Pamphlet "House 2" (2nd Revision), para. 5, a person is eligible for the single plot owner's concession in respect of set-off of development charge against a claim on the £300 million only if he "starts to build a house on that plot for occupation by himself or by a member of his immediate family before January 1, 1953. (Building operations started without a building licence will not qualify.)" The single plot owner's concession is not perhaps quite so valuable since the announcements that ordinary claimants may expect 80 per cent. of their agreed claims (*ante*, pp. 176, 226), and that the development charge may be set off against the claim (*ante*, p. 409), but it is still worth bearing in mind that as the Pamphlet now stands the concession will expire on December 31, next.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the Managing Editor, *Journal of Planning Law*, 3 Chancery Lane, London, W.C.2. *Every attempt will be made to return drafts or unsuitable copy, but no guarantee can be given in this respect. Books for review should be sent to the Publishers at the above address.*

The 1947 Planning Acts and their Operation—with particular reference to Housing

By Desmond Heap, ll.m., l.m.t.p.i.,
Comptroller and Solicitor to the Corporation of the City of London

Extracts from an Address to the Annual Meeting of the Scottish National Housing and Town Planning Council at Fort William, October 3, 1952.

1. Apart from the Town Development Act, 1952 (which does not apply to Scotland) there has been no new legislation this year on the increasingly important subject of land planning. Accordingly, we must once again turn our deliberations to the oft debated, much abused and frequently misunderstood planning Acts of 1947, by which I mean the Town and Country Planning Act, 1947 (relating to England and Wales) and its younger sister (for it became law exactly one week after the English Act), the Town and Country Planning (Scotland) Act, 1947 (relating to Scotland).

The Planning Provisions of the 1947 *Acts*

2. It has been said, and I think rightly, that the planning provisions of the 1947 Acts are, in the main, working satisfactorily. The day to day control of land development by local planning authorities goes forward. Development plan inquiries are now being held up and down the country and some development plans have already come into operation. It will, however, be many months before the whole of Great Britain is covered with operative development plans; but this is not a point for complaint, as I hope to show. Both before and after they come into operation these development plans are rich storehouses of information concerning land in Great Britain. They have been termed the Domesday Books of the twentieth century, a description with which, if I may say so, I entirely agree.

3. In so far as these development plans designate land for compulsory purchase it is, of course, essential that they should come into full operation, after approval by the Ministry, before

action upon such designation can take effect. But in so far as these development plans act as guiding factors as to the course of development in the areas to which they relate, there is really no hurry for the date of their coming into operation. Local planning authorities still have the contents of these plans in mind when dealing with the day to day grant or refusal of applications for planning permission, and if the decision which the planning authority gives to an applicant is not acceptable to him, he has, of course, a right of appeal to the Minister. It seems to me that the position will not be dissimilar to this after the development plans come into full operation and effect.

Industry in Obsolescent Areas

4. There is one special point in connection with the content of development plans to which I would make reference, and that is the matter of industry and congested central areas.

5. Some of the development plans require the removal of industry from residential areas and from obsolescent congested central areas. This is a major planning matter and arises in its most acute form in intensely developed areas such as London, Birmingham, Glasgow, Liverpool, Manchester and so forth. One of the difficulties is that though the owner of an industrial building in a central congested area may be able to see the wisdom of the provisions of a development plan which require that he shall remove his industry to some newly developing and less congested area, marked out in the development plan for the accommodation of overspill, he finds that if he does so move he has to pay a development charge on his new factory, whereas he could go on bolstering up the mouldering edifice of his existing obsolescent factory almost indefinitely and could even extend it to a certain extent in its existing situation without incurring any development charge at all. This is particularly, I suppose, one of the cases in which this matter of development charge can rightly be said to be an obstacle to good development.

6. There is, however, a second difficulty in this matter, which is that even if the owner of the obsolescent industrial building is prepared to remove and pay the development charge which will undoubtedly become due, there is nothing to prevent some other industrialist at once occupying the old vacated factory and using it for the same purpose as previously, unless the local planning authority is prepared to pay substantial compensation on which it can claim only a modest

and inadequate Exchequer grant or, alternatively, unless the local planning authority is prepared to buy the site of the old factory and make an undoubted loss on the transaction.

7. This question of the continued use of decrepit and obsolescent industrial buildings situated in the intensely developed central areas of large towns is a great thorn in the side of good planning. One suggestion which has been made to cure it is that the Development Charge Regulations might be amended so as to spare the industrialist, who is prepared to remove his factory on planning grounds, from having to pay the full 100 per cent. development charge on any new factory which he erects in whatever overspill area he goes to, and that at the same time an effort should be made to fix what has been termed a " life " on all existing industrial buildings now falling into a state of obsolescence. The Uthwatt Committee recommended that a " life " of ten years should be fixed in the case of premises " which, although not unfit for human habitation, are, by reason of their age, design, construction, arrangement or density not in accordance with the standards applied to new buildings for similar purposes in the same or a similar district." The Committee also recommended that a " life " should be placed on any building or use which, from a planning point of view, was of a non-conforming character and that the right to maintain, replace, extend or use such a non-conforming building should be subject to whatever " life " had been placed upon it.

8. These recommendations have not been translated into legislative effect and require the most careful consideration before they are. Nevertheless, those concerned in the planning of heavily industrialised areas in which there is a good proportion of obsolescent buildings are feeling more and more that something on the lines of these recommendations may have to be done in order that the thinning-out of industry in over-congested central areas, as propounded by many of the development plans now under consideration, may, on the coming into force of such plans, actually have a chance of being carried into effect.

The Problem of Purchase Notices

9. May I now make reference to s. 19 of the Town and Country Planning Act, 1947 (s. 17 of the Scottish Act, of 1947)? Under these sections, as you know, where planning permission for development of land is refused on planning

grounds and the land is thereby rendered incapable of reasonable and beneficial use the owner may serve a purchase notice on the appropriate local authority requiring that authority to purchase his land.

10. This matter of purchase notices has been a great source of concern to those local authorities who are purchasing authorities under the 1947 legislation. Some of them, in fact, are beginning to think that whilst the 1947 legislation has removed the sting of compensation in connection with planning decisions, this sting has been replaced by the embarrassing obligation to purchase an increasingly large number of properties for which the local authority has no present use. In some areas this matter is quite serious, as the local authorities are paying out more and more money and acquiring more and more land which, for the time being, they cannot turn to any use at all.

11. It will be appreciated that all these s. 19 purchases of land are incapable of any form of comprehensive redevelopment, for the simple reason that the lands to which they relate are scattered throughout the area of the local authority. There must be a limit to the amount of unremunerative land which, at any given moment, a local authority can continue to hold, and some authorities are beginning to feel that they have reached that limit. When it is remembered that some applications to develop land are undoubtedly made not because there is any genuine possibility of carrying out the proposed development (even if planning permission were granted), but purely with a view to founding a base on which to serve a s. 19 notice and thereby unload the derelict land on to the local authority, it would appear that the time has come when further consideration should be given to restoring the right, which local planning authorities obtained in 1943 but lost in 1947, to postpone consideration of a development application unless the applicant is able to show that if his application is granted he will in fact be able to carry out his proposed development within the immediate, or fairly near, future.

12. It is, of course, hard on any private individual to continue to own land which is not, for the time being, remunerative but, on the other hand, it is not entirely fair that this kind of land should be increasingly loaded on to the back of local authorities. Admittedly, a local authority can claim Exchequer grant in connection with the acquisition of s. 19 land but the grant is, in the circumstances, an inadequate one.

Payments out of the £300 million Fund

13. I now turn from the planning provisions of the 1947 legislation and the points associated with them to the more vexed question of the financial provisions of that legislation, that is to say, to the provisions relating to the sharing out of the £300 million fund to landowners for the development value of their land, which value they lost on the coming into operation of the Act, and to the payment of development charges by those who, having obtained planning permission for development, proceed to carry out that development. It is the financial provisions of the 1947 planning legislation which have caused the greatest controversy.

14. Perhaps these provisions are not regarded with such complete distaste as heretofore since it was discovered that, after preferential payments have been paid in full, the £300 million will be sufficient to provide 16s. in the £ (or thereabouts) to all the others who have successfully claimed on the fund for their lost development value. Moreover, it now appears (helpfully enough) that the Central Land Board will allow 80 per cent. of an admitted claim on the £300 million to be used as security for any development charge which has to be paid by a person seeking to carry out development, the developer in such a case thus having to find, before he starts his development, only 20 per cent. of the amount of the development charge.

15. Nevertheless, many people in 1953 are going to collect a share of the £300 million for lost development value on land which they never had, and still do not have, any intention of developing. £300 million is a lot of money to be released at a given moment and, without getting too deeply involved in financial matters touching on inflation, I do venture to wonder whether, in any amending legislation that may be forthcoming, further thought could not be given to the suggestion, made by the Royal Institution of Chartered Surveyors, that the making of any payment out of the £300 million fund in connection with any plot of land should be postponed until the development of that particular land takes place or is prohibited on planning grounds.

16. If this were done provision would, no doubt, have to be made to cover cases where an application for planning permission would, if dealt with, have to be refused on planning grounds, but where there was *no* reason to believe that even if the application were granted the development would, in fact, take place. This is a matter which could be covered by giving

local planning authorities the right to postpone consideration of a development application, unless the applicant were prepared to show that if the application were granted the development would take place in the near or immediate future. Reference has already been made to the re-enactment of this right of postponement in connection with purchase notices under s. 19 of the 1947 Act, and here is another ground on which the re-introduction of this right could be justified.

The effect of Development Charges

17. As to development charges, these remain fixed at 100 per cent. of the increase in value of land due to the grant of planning permission, and they continue to be thoroughly disliked. The true intent of sound land planning is not only to stop bad development but to encourage good development, and it is suggested that not enough good development is now going on.

18. Some say that lack of materials (as shown by the difficulty of obtaining building licences to build) and the prevailing economic stringency is the real deterrent to good development at the present time. Others say that, whilst admitting the effect of the lack of materials and the prevailing financial stringency, the real deterrent to good development is the 100 per cent. development charge which is destroying the landowner's incentive to develop land himself or to sell it for development by other people, and those who take this line of argument insist that all this would be the clearer if it were *not* for the existing financial stringency.

19. The debate between those who hold these opposing views continues, and I am certainly not going to sit in judgment on either of them today. I do, however, maintain that the 100 per cent. development charge is, to say the least, psychologically bad, and I cannot help continuing to feel, notwithstanding learned arguments to the contrary, that a reduced development charge at the rate of say 70 per cent. or 75 per cent. might go a long way towards mollifying the sting and bitterness engendered by the full 100 per cent. charge. No further legislation is required for this; it can be done by amendment of the Development Charge Regulations.

Amendment of Compensation—Betterment Provisions

20. Reduction in the rate of development charges on the one hand and postponement in the making of payments out of

the £300 million fund until development is imminent on the other may not go all the way to curing the ills and frustrations alleged to derive from the financial provisions of the 1947 legislation. Nevertheless, these two lines of amendment, whatever their defects, are certainly better than what is sometimes called the general sweeping away of the financial provisions, *i.e.*, Parts VI and VII (Parts V and VI of the Scottish Act) of the 1947 legislation on the ground of administrative simplicity.

21. The total repeal of Parts VI and VII of the 1947 English Act would at once restore the compensation-betterment problem as it existed under the Town and Country Planning Act, 1932. It could only be justified if it could be shown that public opinion had arrived at a state in which it was prepared to say that there should be no compensation and no betterment in connection with land planning. This would make for great simplicity but would also, in my view, cause hardship.

22. The object of the compensation-betterment provisions of the 1947 legislation was to secure fair play as between the man whose application for planning permission was granted and the man whose application was refused. The principle of no compensation and no betterment would function very well if all planning applications were granted, in which case, of course, there would be no need for the making of development applications, for there would, in a word, be no control of land use whatsoever. If there is to be such control then it is unavoidable and inescapable that some applications to develop must be refused and the intricacies and complexities of Parts VI and VII found their way into the English Act of 1947 solely because it was felt that in the climate of public opinion it was right that there should be some balance, or equity done as between the man who got planning permission and the man who was denied it. Has public opinion abandoned this standpoint? I think not. It is, however, a question which must be answered in the affirmative before there can be any question of a general repeal of Parts VI and VII of the 1947 legislation and those who talk about sweeping away these Parts altogether should, I think, bear this point in mind.

23. Whatever is done about Parts VI and VII of the 1947 legislation there can be no doubt that the planning provisions of the 1947 Acts must remain. The principle of the control of land use was accepted by the legislature in 1909 and the

principle has come to stay. Indeed, if there was a need for it (as Parliament evidently thought there was) in 1909, how much greater is that need today. Accordingly, I return to the planning provisions of the 1947 Acts and conclude with some general observations upon them and upon the relationship of housing to land planning.

Control of Development carried out by Public Bodies

24. Much of the development carried out during the inter-war years of 1918–1939 which has earned criticism on the ground that it was tasteless, badly sited and unsatisfactory in general, was undoubtedly (though not wholly) the result of private development. Accordingly, the 1947 legislation strongly tightened the control of land development but, ironically enough, did it at a time when the tendency was for less and less development to be undertaken by private individuals and more and more to be carried out by public bodies and government departments.

25. Town planning control ought to operate as strongly upon the large as upon the small, and in this connection it is worth pondering that over the development of trunk roads, omnibus depots and railway stations and their appurtenances (being under the control of the Minister of Transport), of gas-works and electric power stations (being under the control of the Minister of Fuel and Power), of telephone poles, installations and exchanges (being under the control of the Postmaster-General), of airports (being under the control of the Minister of Civil Aviation) and of naval and military establishments of all kinds, planning control is not automatically and necessarily as strict as in the case of private development.

26. When development is carried out by statutory undertakers and local authorities with the consent of the appropriate Government Department that Department can, in giving such consent, also direct (see s. 35 of the Town and Country Planning Act, 1947—s. 32 of the Scottish Act of 1947) that the appropriate planning consent for development should be deemed to be granted. No doubt consultations between the Government Department immediately concerned and the Ministry of Housing and Local Government take place and it is to be hoped that at these consultations all Departments of government, including the planning Department, are talking on equal terms.

27. It is sometimes suggested that Government Departments know everything there is to know about the needs of good

planning and in consequence that planning control by law is, in their cases, unnecessary. This is to be doubted. It is suspected that Government Departments suffer from the same human frailties as afflict private individuals because, as is known, they have, on occasion, sought to carry out development on land which was satisfactory from, for example, a pecuniary point of view, but by no means so satisfactory, in the estimation of planners well qualified to judge, from a town planning point of view. For example, the intrusion into green belts of development by local authorities may be the easy way out for the moment and when viewed solely from the parochial or local angle, but it may not be quite so satisfactory in the long run and when viewed from the angle of development planned on a national basis.

The Motivating Factor in Land Planning

28. Having mentioned the need for the application of planning control as much to development by local authorities, Government Departments and nationalised bodies as to development by anybody else, we must be on our guard against pressing the point further than is justified. In this connection we must remember that the days when land planning was concerned, as it was largely from its inception in 1909 to 1932, with the preservation of existing amenities and the creation of the new ones have gone. As the years go by land planning becomes less and less of a gentlemanly occupation, leisurely concerning itself with the beautifying of town and countryside, and more and more of a desperate struggle to get order and fair play amongst a number of violently competing interests for the use and occupation of an increasingly insufficient quantity of land.

29. In short, land planning is now concerned with seeing that the right use is made of the all too small quantity of land available in Great Britain. The population grows. In 1911 it was forty millions; it is now around fifty millions and the scramble for land is intensified year by year. The factories for heavy industry, the electricity stations, the sewage works and the limestone, sand and gravel quarries have got to go somewhere. Wherever they go the people who live near to them will not like them, for this form of development is not popular anywhere. It is, however, essential and vital development and land must be found for it. Amongst the many competing interests for land the Ministry of Housing and Local

Government has the difficult task of having to strike a judicious balance.

Housing and Planning—Planning and Housing

30. This brings me finally and especially to the point of housing in relation to planning. There has been much discussion recently on the persistent encroachment of housing upon good agricultural land. This cannot but be serious. Out of a population of some 50 millions in Great Britain, I understand that not more than about 30 millions can be fed from home sources. Letters to the press stress the amount of farming land annually being lost to building. One of these recently declared that British agriculture was losing land to housing and industry at the rate of over 50,000 acres a year, whilst thousands of acres of marginal or scrub land, which are of no use to farming and which would be extremely expensive to bring into profitable production, remain unmolested. I suppose the trouble is that such marginal and scrub land would also be expensive to bring into profitable housing or industrial development. That, no doubt, is why schemes for new housing prepared by fearless town planners may be found increasingly to operate against the growing call, backed by political pressure, to build houses as quickly and cheaply as possible.

31. Land planning, especially when it is carried out on a national scale as Parliament requires that it shall be (see the Minister of Town and Country Planning Act, 1943) is a much wider concept than any matter of local housing. Housing is only one of the many uses to which land can be put; planning covers them all. This is fairly self-evident but at times is in danger of being forgotten.

32. It is a question of which comes first, the housing or the planning. If the object at present is to produce houses as quickly and as cheaply as can be, it is impossible not to have the greatest sympathy with such object. Nevertheless it cannot be denied that more and more fertile land is going out of cultivation and being used for industrial and housing development. This being so, it would appear that the time will come (if, indeed, it has not already arrived) when attention will have to be given to the development of houses on land which is capable of being used for housing and industrial development (though perhaps at a cost) but which is nevertheless incapable of being used (at almost any cost) for agriculture.

33. This is a difficult problem and is an example of the keen competition for land to which I have previously referred. Nevertheless, if land planning is not to lose its *raison d'être* decisions on the lines just indicated will have to be taken. More and more of these decisions will have to be taken from a national standpoint rather than from a local one and this will make it all the more difficult for local housing authorities, having an intense but localised interest in a particular form of development, to appreciate the merits of a decision which goes against them but which is based not on a local but on a national view of things.

34. There is, bluntly, not enough land to go round and the time has gone when the use of land can be subjected to a process of trial and error. Mistakes in connection with land use can no longer be afforded. Land can only be used after the most careful and thoughtful study as to whether the proposed new use is the best use, from a national point of view, which can be made of the land. That is what land planning on a national scale means and if it doesn't mean that it means nothing at all and the gigantic administrative machine created by the 1947 legislation loses all justification.

35. Accordingly, I leave you with this interesting and difficult question. Would you be prepared to accept a quicker rate of house building if it meant building the houses in the wrong places? It is a teasing question and on your answer depends your faith in land planning which, admittedly, may well, in initial stages, cost much in order that dividends may accrue in later stages.

36. In this connection my advice to the planners is that they should, above all else, preserve a strong sense of proportion so that the initial costs, distractions and inconveniences of land planning, while having to be faced and borne, may not be too high, and the dividends, whilst having to be waited for, may not have to be waited for too long. The tendency of land planning to cater for Posterity rather than for the Immediate Tomorrow requires to be watched because I hold that the present is entitled to see some sort of return for its outlay on land planning though it cannot, of course, expect to see the full fruits. It cannot reasonably expect to be in attendance at the great Harvest Festival of Planning, but, even so, it is entitled, I suggest, in the interim to a modest taste on account (as it were) of the Good Things Yet to Come.

Equivalent Reinstatement

By W. A. Leach, F.R.I.C.S.

This aspect of compulsory acquisition rests on rule (5) of s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, which reads as follows:

> (5) Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the (tribunal) is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement.

Basis of equivalent reinstatement

When it is required to determine the compensation to be paid to a person compulsorily deprived of his property, what has to be arrived at under the Lands Clauses Acts is not just the value of his property, but "all the loss incurred by his expulsion" by compulsory purchase as in an action for trespass by expulsion: Erle C.J. in *Ricket* v. *Metropolitan Ry. Co.* (1865) 34 L.J.Q.B. 257, and *Horn* v. *Sunderland Corporation* [1941] 2 K.B. 26, although in the latter case Scott L.J. did not accept the completeness of the analogy with trespass.

In a very large number of cases the only loss that is suffered (excluding injurious affection by severance or otherwise) is the value of the property taken or that value plus something for disturbance. Sometimes, however, the effect of the expropriation would be the complete frustration of the purpose of the occupation of the property unless the compensation would cover the cost of acquiring and adapting other suitable premises, when the loss incurred by the expulsion would require that the expropriated person should be put into a position to obtain and adapt such premises. The payment, by way of compensation, of a sum which would have this effect came to be called "equivalent reinstatement," but although this was a recognised method of computing compensation under the Lands Clauses Acts, that expression is not mentioned therein.

"Equivalent reinstatement" received express statutory recognition in rule (5) of s. 2 of the Acquisition of Land

(Assessment of Compensation) Act, 1919, the purpose of which was not to affect the basis of such a claim but *to qualify the nature of the cases which could be dealt with in this way.* If, as is now almost invariably the case, the 1919 Act is applicable to a compulsory acquisition, then by rule (5) the claim for equivalent reinstatement is only permissible " where the land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose."

The claim in such cases will include the cost of acquiring and where necessary adapting the alternative premises so that the former occupation substantially unaltered and undiminished, may be carried on : *A. & B. Taxis* v. *Secretary of State for Air* [1922] 2 K.B. 328, 344 (a case under the Indemnity Act, 1920, where a similar principle would seem to have been involved). Expenditure which would make the new premises substantially larger or more commodious than those compulsorily acquired would have to be disregarded whilst regard should be had to the condition of the latter, but if the new premises are already larger and better than those compulsorily acquired that would not necessarily be a ground for reducing the compensation below the cost of purchasing the new premises (*St. John's Wood Working Men's Club Trustees* v. *London County Council* (1947) 150 Estates Gazette 213, where this point was raised but the claimant's figures were substantially accepted by the Official Arbitrator) unless, perhaps, other suitable but less costly premises were available or the new premises were of greater value for the purpose of the claimant. No doubt any development charge payable for the adaptation or change of use of the substituted premises could now be included as part of the cost of conversion for the purposes of the transferred user.

It is, of course, clear from the wording of rule (5) that when the loss incurred is met under the 1919 Act by the provision of substituted premises the open market value of the old premises is immaterial. The compensation in such cases may be assessed *either* on the basis of equivalent reinstatement when the claim will be under rules (5) and (6) *or* on the value of the interest being acquired plus injurious affection, disturbance, etc., under rules (2) and (6). Where the new premises are less valuable than the old the latter course would no doubt be adopted by the claimant (regard being had, of course, to the cost of conversion).

Devoted to a purpose

A number of points on rule (5) require consideration.

First, what is the meaning of "devoted to a purpose?" It was suggested in the *St. John's Wood Case*, *supra*, that it meant devoted in the same way as a church is devoted to religious worship. This contention was not accepted by the Official Arbitrator. There is no requirement of any form of consecration or dedication or any necessity that the purpose shall be an ideal, nor is it required that the premises shall have been designed for the purpose. "Devoted to a purpose" is, however, no doubt intended to mean something more than "used for a purpose." It would seem to imply use wholly and permanently in the interests of a purpose. It would also seem to require something beyond the caprice of an individual or a use to be continued so long as profitable or convenient. It may be that "devoted" requires the property to be vested in somebody for the purpose; but whether that is so or not such vesting would be valuable as evidence of devotion. It was held in *Aston Charities Trust, Ltd.* v. *Stepney Corporation* (1952) 3 P. & C.R. 82—that "devoted" introduces a conception of intention and indicates a different test from that for *de facto* use. The question of "devoted" did not arise in the *A. & B. Taxis Case*, *supra*, there being no corresponding provision in the statute there concerned.

Absence of general demand or market

Secondly, it will be noted that it is not required that there should be some peculiarity about the property itself which would exclude it from having a general market. Although this rule was laid down nearly 30 years before the conception of "existing use value" under the 1947 Act, the lack of demand must be for land for the purpose to which the particular land is devoted. It will be noted that it is not required that there should be no general demand for the particular land for the purpose; there must be no general demand for land in general for that purpose.[1]

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[1] Reference may be made to para. 12 of the "Second Report of the Committee on the Acquisition and Valuation of Land for Public Purposes," 1918 (Cmd. 9229). In this paragraph it was said that "market value would afford an unjustly low measure of compensation, *e.g.*, where the property expropriated consists of a church, chapel, school, cemetery, or other property adapted for a particular purpose for which there is no general demand." It also refers to "absence of demand" if the property were put on the market and to the compensation being a

This provision may have been intended as a partial relaxation of rule (3) whereby the value of the particular land for a purpose for which there would be only one purchaser would be excluded from the meaning of "value in the open market" as prescribed in rule (2). Thus, where premises have a special value for the purpose to which they are devoted, rule (3) might exclude that value from consideration in assessing the value of the land for compulsory acquisition and in consequence those responsible for pursuing that purpose might find it impossible to acquire other suitable premises out of the compensation money. Thus in the *St. John's Wood Case* it was a point that the acquisition and conversion of other premises would cost considerably more than the value of the acquired premises.

Tribunal's discretion

Thirdly, it will be noted that the tribunal has a discretion and is not obliged to apply rule (5). It may do so where the conditions of the rule are fulfilled and possibly the intention is that effect shall be given thereto where difficulty would arise in re-housing the particular activity out of the compensation money. There may be other grounds for exercising the discretion but one purpose of the rule would seem to be to mitigate a particularly harsh effect of rule (3). In applying rule (5) the tribunal should doubtless look at the purpose of the rules as a whole. The tribunal must also be satisfied that reinstatement is bona fide intended.

How far can "equivalent reinstatement" be claimed as "disturbance"?

The remedy of equivalent reinstatement being limited by rule (5), how far can the same effect be achieved in a claim for disturbance, the right of making which is confirmed in rule (6)?

It is submitted that the claim for disturbance is no substitute and to treat it as if it were would be to defeat the purpose of rule (5) limiting the application of "equivalent reinstatement," rule (2) providing for compensation at open market value of the land acquired and rule (3) as to the use of land for a special purpose. The normal claimant is entitled to the

"small proportion of the sum he (the claimant) must necessarily spend in order to reinstate himself on another site." It seems to be clear that what the Committee had in mind was the demand for the particular property but their recommendation (which rule (5) substantially follows) does not accurately reflect their thoughts.

value of the property acquired and out of this sum he must acquire whatever alternative premises he requires. What he pays for the alternative premises is no business of the acquiring authority, nor, prima facie, is what he spends on altering them. But for what he spends on alterations to adapt the alternative premises for his purposes (so far as the expenditure does not increase their value and is for works which are reasonable having regard to the facilities and standards of the acquired premises) he *may* have a right of claim. His broad right of compensation is to be recompensed for all the loss due to his expulsion (*Ricket* v. *Metropolitan Ry.*, *supra*), and expenditure undertaken in the protection of his goodwill would seem clearly to fall within that category. The claimant is entitled to be compensated for the unavoidable (*Bidder* v. *North-Staffs Ry. Co.* (1878) 4 Q.B.D. 412, 432) loss of or injury to his goodwill and within its full value he may claim in part for its injury and in part for the cost of preserving what can be preserved.

Presumably, it was on this basis that compensation was allowed in *Easton* v. *Islington Corporation* (1952) 3 P. & C.R. 145, for the cost of plumbing work, signwriting and electrical work at the premises to which the claimant had removed his business. The new premises were held under lease and the claimant, who had installed in the premises a new shop front, was also allowed the loss of value in the shop front at the end of the term. The principle involved here would seem to be that the installation of the front was necessary for the preservation of the goodwill, that during the term it added to the value of the premises over and above the rent paid, and that the lessee's (claimant's) only loss in connection therewith would arise at the end of the term.

In the same case the claimant was not allowed an item of claim for additional rent and rates at the alternative premises, the allowance of such an item being considered tantamount to allowing equivalent reinstatement. It is submitted that the proper place for bringing into account such increased outgoings would be in the injury to goodwill due to the expulsion, there being three considerations, *viz.*, (i) the value of the goodwill before removal (allowing for the fact that any profit rental value will be separately valued), (ii) the value of the goodwill as transferred to other premises with the increased outgoings, and (iii) the expenses of transferring the goodwill, *i.e.*, the reasonable adaptation of the new premises for the purposes of

the business. The cost of removing an unprofitable business, unless only temporarily unprofitable, could probably not be recovered : *A. & B. Taxis, Ltd.* v. *Secretary of State for Air, supra*; *Bidder* v. *North Staffs Ry. Co., supra.*

Fixtures

Similarly with fixtures; within the full value of the fixtures to him *in situ* less their value to the acquiring authority the claimant may remove the fixtures and set them up elsewhere at the cost of the authority. In this case, however, the right of removal is probably at the option of the authority, for the notice to treat would embrace all things which would normally pass on a sale of the land and the authority could insist upon taking them or be required to take them. Diminution in the value of fixtures due to removal may be claimed : *Gibson* v. *Hammersmith & City Ry. Co.* (1863) 32 L.J.Ch. 337.

Chattels

So far as chattels are concerned the cost of any necessary setting up at the new premises would be part of the cost of removal.

Other points

In the *Aston Charities Case* there was, as a result of war damage, a temporary use at the date of the notice to treat but the intention of reverting to the use to which the premises were devoted had not been abandoned and the application of rule (5) was upheld.

Whether reinstatement four miles away was too distant to be entertained was held to be a question of degree and the finding of the Lands Tribunal was not disturbed.

Replacement and Extension of Industrial Buildings

By Ronald P. Crompton, m.a., l.a.m.t.p.i.,
Deputy Town Clerk of the Borough of Middleton

The following facts give rise to some interesting considerations.

An industrial concern had within its premises and within the one curtilage a number of separate buildings. The constitution of the premises had altered materially since 1937 as a large fire had in 1938 destroyed some of the buildings and others had been removed as unsafe. The company wished to pull down a small existing building and to erect partly on the site and partly on land which had not been previously used for building another building which exceeded 5,000 square feet as a whole but not after deduction of the floor space previously occupied.

Section 12 (2) (*a*) of the Act provides that development shall not be deemed to be undertaken and no permission is required for " the carrying out of works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the external appearance of the building." Two points arise. The Town and Country Planning (Amendment) Act, 1951, was framed partly to remove difficulties caused by the lack of control over war damaged buildings. The Government's legal advisers considered that " maintenance " in s. 12 (2) (*a*) included any work necessary to restore a war damaged building and that therefore planning permission was not necessary for such a building so long as any part of the building, even a few bricks, remained standing. The 1951 Act amended the position with regard to war damaged buildings but did not affect any other class. The wording of the section would appear to cover other types of damaged buildings and thus where damage had been caused by ordinary fire the rebuilding on the framework of the original building might be classed as maintenance. The second point is this. By s. 112 (2) if two buildings are within the same curtilage, for the purposes of paragraph 3 of the Third Schedule they

may be grouped together as one unit. It is also material to know, in order to determine whether the external appearance of the building is affected, whether they can be grouped together for other than calculation purposes. For instance, if a small building is safely tucked away in the middle of the curtilage it may be enclosed from an outside view of the buildings as a whole but as an individual building any extension would materially affect its external appearance.

If the proposal is outside s. 12 (2) (*a*) it is important to ascertain whether the development is permitted, and the relevant provision is contained in Class VIII of Sched. I to the 1950 General Development Order, as follows:—

> 1. Development of the following descriptions, carried out by an industrial undertaker on land used (otherwise than (i) in contravention of previous planning control or (ii) without planning permission granted or deemed to be granted under Part III of the Act) for the carrying out of any industrial process, and for the purposes of such process, or on land used (otherwise than as aforesaid) as a dock, harbour or quay for the purposes of an industrial undertaking:—
>
> . . . . .
>
> (iv) the extension or alteration of buildings (whether erected before or after July 1, 1948) so long as the height of the original building is not exceeded and the cubic content of the original building (as ascertained by external measurement) is not exceeded by more than one-tenth nor the aggregate floor space thereof by more than 5,000 square feet.

Two conditions are prescribed:—

> 1. No operations carried out under sub-paragraphs (iii) or (iv) shall materially affect the external appearance of the premises of the undertaking.
>
> 2. No building shall be extended or altered under sub-paragraph (iv) where a certificate of the Board of Trade would be required under subsection (4) of section 14 of the Act if an application for planning permission for that development were made.

It is interesting to notice that the external appearance is in this case specifically of the "premises of the undertaking."

Condition 2 appears at first sight to be merely a repetition of the provision that the aggregate floor space shall not be exceeded by more than 5,000 square feet as it is in cases of more than 5,000 square feet that a certificate is required. But Parliament does not usually insert conditions for no reason. On the facts as given in the first paragraph the buildings as they existed at the proposal of the alteration were such that by the erection of the new premises the

increased floor space occupied would not have exceeded 5,000 square feet taking into account the part to be demolished. But the effect of the condition is not governed by the question whether it is a new building, an alteration or an extension. A certificate would be required if an application for planning permission were made and the floor space exceeded the 5,000 square feet. A particularly difficult position arises as the local planning authority themselves have to interpret s. 14 (4) and presumably might at some subsequent time be asked by the Board of Trade why they judged that a certificate was not necessary under condition 2. In practice, of course, this is unlikely. The distinction is a fine one. The condition applies to all cases exceeding 5,000 square feet except where under the terms of the Town and Country Planning (Erection of Industrial Buildings) Regulations, 1949, the extension does not exceed this amount. In subs. (4) the buildings as they exist at the time of the proposal are measured and the floor space after the proposal has been carried out are to be measured and to come within the section the difference has not to exceed 5,000 square feet.

If the proposal is neither within s. 12 (2) (*a*) nor within permitted development then an unusual position may arise. If the facts of the case given are examined and if it is borne in mind that all buildings within the curtilage are grouped together for calculation purposes, it is easy to see that the development may come within either class 1 or 3 of the Third Schedule. The unusual position arises that if the applicants' appeal against refusal fails, then he may have the choice between serving a purchase notice on the local authority under s. 19 or claiming compensation under s. 20 from the local planning authority, who are often a different body. The position is made more unusual by the fact that in the normal way under a development plan designated areas are purchased by the local authority. The position of the county council as planning and compensating authority in Third Schedule cases does not appear to be a very happy one.

The Winning and Working of Peat

A note on the complex nature of certain legislation.

By Harold J. J. Brown, Barrister-at-Law

It is, no doubt, common knowledge that some of the provisions of the Act of 1947 and the regulations made thereunder are somewhat complicated. Just how complex the legal position is in relation to some matters may be illustrated by the statutory provisions applying to the relatively unimportant operation of obtaining peat from land.

The " winning or working " of peat clearly is " development " within s. 12 (1) of the Act. Hence, except to the extent that special exemption is given by other statutory provisions, planning permission is required and development charge is payable in respect thereof.

The question of development charge in one class of case can be disposed of fairly easily. The Development Charge Exemptions Regulations, 1950 [1] (para. 12), give exemption to the " winning and working of peat by any person for the domestic requirements of that person ". But the digging of peat for someone else, whether as part of a commercial transaction or not, is not granted exemption from development charge by this provision.

The question of planning permission is not at all simple. There is no specific grant in the General Development Order. There are, however, special provisions both in the General Development Order, 1950,[2] and in the Minerals Regulations, 1948,[3] as to " mining operations," and this is defined in both cases as meaning the winning and working of minerals. The term " minerals " includes (by s. 119 (1) of the Act) any " substances in or under land of a kind ordinarily worked for removal . . . provided that it shall not include peat cut for purposes other than sale." Therefore, the special provisions as to mining operations in the General Development Order and the Minerals Regulations extend to the working of peat

[1] S.I. 1950, No. 1233.
[2] S.I. 1950, No. 728.
[3] S.I. 1948, No. 1521.

for commercial purposes but not to any working of peat where the purpose is merely to supply the domestic needs of the person who works it.

No exemption from the requirement of obtaining planning permission is granted to the cutting of peat for domestic purposes. This is clearly an operation "in, on, over, or under land," and not merely a use of land, and no question can arise as to it being not a material change of use or as to it being within s. 12 (2) (*e*) or s. 12 (5) of the Act. It is development of land for which no specific permission is given by the Act or regulations, and an application for a grant of permission by the local planning authority must be made in all cases.

Where peat is worked for the purposes of sale it is a "mineral," and the act of working it constitutes "mining operations." It may, therefore, be within Class XIX of the General Development Order, and if it complied with the conditions therein, temporary permission for the continuance of the operations was thereby granted, pending determination of any application for planning permission made before November 1, 1948. It will also be subject to the special provisions of the Minerals Regulations, and exemption from development charge normally applied in respect of workings in the period up to July 1, 1951 (reg. 4). Furthermore, if a claim on the £300 million fund has been made in respect of the working of the peat, and if a person engaged in its working owned an interest in it on July 1, 1948, the Mineral Development Charge Set-Off Regulations, 1951 [4] which provide for set-off of development charge against 100 per cent. Part VI payment, will apply. But it is not proposed here to proceed further into the details of these complicated sets of regulations.

The number of persons engaged in cutting peat, whether for domestic requirements or otherwise, may be small, but it seems likely that the number of such persons who are aware of the statutory provisions governing their work will be very small indeed. Without detracting from the importance of winning peat, it seems reasonable to conclude that the law relating to this occupation is unnecessarily complex. Until such time as it is clarified, perhaps the Minister would consider issuing an explanatory leaflet, couched in simple terms, for the guidance of those affected?

[4] S.I. 1951, No. 2156; see [1952] J.P.L. 31.

Development in Barsetshire

Royalty Development Charge on Dormant Minerals

The following conversation may be assumed to have taken place between S., a surveyor, and D.V., the district valuer, during a discussion on development charge.

D.V. This case is a bit out of my line of country, really, but as the mineral valuer concerned is on leave and the matter is one of urgency I have been deputed to deal with it.

S. Well, I expect you have been well briefed and know as much about the subject as the mineral valuer now.

D.V. I've made myself pretty familiar with this case and read all the instructions and the Practice Notes. Fortunately we have perhaps more to go on in these mineral royalty cases than where ordinary development charges are concerned, since there is a wealth of evidence as to royalties actually paid both before the Act and, as far as near-ripe minerals are concerned, after the Act.

S. This case, of course, concerns what the Central Land Board defines as "dormant minerals" [para. 1 (*b*) of the Minerals Practice Notes]; actually, they are not really dormant but very ripe. Unfortunately, there was no interest held by a mineral undertaker on the appointed day so that we cannot technically qualify as near-ripe and escape actual payment of development charge under the set-off scheme [the Mineral Development Charge Set-Off Regulations, 1951, S.I. 1951, No. 2156 ([1952] J.P.L. 31)].

D.V. I hope you aren't blaming me for the definition of near-ripe in the set-off regulations. As a matter of fact I believe various trade associations were consulted when the regulations were being drafted.

S. That is so, but I am not sure whether they were completely in agreement with the final result.

D.V. Be that as it may, the problem that now confronts us is what development charge you should pay having regard to the planning permissions which you hold to extract the minerals by surface working from the land.

S. Subject, don't forget, to the conditions imposed as to the method of working, the planting of a screen of trees, and

the restoration of the land for agricultural use when the mineral workings cease. It will cost us £200 an acre to put back the top-soil.

D.V. And when you've done it the land will be worth £30 an acre! However, what is your anticipated rate of working, and for what period do you want the royalty fixed?

S. We anticipate getting 50,000 tons yearly, and in view of the proved reserves I think 15 years would be a convenient period to take.

D.V. On that basis I am prepared to recommend a royalty of 6d. a ton saleable, merging into a certain rent of £200 per annum, and subject to a surface rent of £4 an acre, with the usual provisions for recoupment of short workings.

S. I don't see how on earth you can ask for a certain rent. If we don't work the minerals during any period we aren't carrying out the development and consequently shouldn't pay a charge during that period. As for the surface rent, to the extent that the land already has an agricultural existing use, that is a factor in the Refusal Value which ought to reduce the charge.

D.V. Dealing with your last point first, don't forget that in mineral development charges we can depart from the ordinary basis of taking the difference between Consent and Refusal Value, because reg. 8 (1) of the Minerals Regulations, 1948 [S.I. 1948, No. 1521; [1948] J.P.L. 330] allows the development charge to be assessed by reference to the amount of minerals got from time to time.

S. That is exactly my point. We should only pay for the minerals actually gotten, and not, as you suggest, by a minimum or certain rent, for those we have not got. We ought to pay for those later when they are extracted.

D.V. My instructions are quite clear. If it was "the custom of the country" to charge a certain rent, and a surface rent in addition to royalties prior to the Act, then I am to use the same basis for development charge to maintain uniformity.

S. I don't see why. Let us examine the reasons in the past for the imposition of a certain rent. Mineral undertakers were apt to take a lease of mineral bearing land in excess of their normal requirements in order to exclude competition, with no immediate intention of working the minerals. Unless the landowner imposed a certain rent, based upon a reasonable minimum royalty, he might have

his land sterilised for a long period with no prospect of any income. The Central Land Board are in a different position since they own all the mineral rights throughout the country, and if ours aren't being worked others are, and they are drawing royalties by way of development charge from them.

D.V. Except the near-ripe minerals.

S. In theory, they are even in that case, but by way of "set-off" instead of actual payment.

D.V. In order to relate my charge to past experience I should have to increase the royalty if there were no certain rent and surface rent.

S. I don't agree, because this certain rent merges in the royalties. That being so, if we exceeded the minimum we should be paying too much if you put up the royalty to a higher figure. Don't forget, too, that we don't need to apply for a determination of development charge unless we intend to work the minerals, notwithstanding that we already have a lease or own the freehold of the land ourselves. To my mind, that is ample justification for a straight royalty basis of development charge with no tags.

D.V. The stereotyped form with which I am provided for notifying you of the charge and getting your agreement stipulates a certain rent and surface rent if it is the custom in the locality for such to be imposed. It is the custom, and I am sorry but I must insist on the same provision.

S. As to the surface rent, I should like to reiterate that so far as the agricultural value is concerned it is already an element in the existing use and you are not entitled to charge it in addition. So far as it contains an element of liquidated damages for the destruction of the surface land it is our existing user which is being destroyed and nothing else. Finally, if it includes anything as site rent for plant and buildings we have to pay further development charge for any development which is not strictly connected with the winning and working of the minerals.

D.V. To give you some safeguard I am prepared to recommend that you can "break" the 15-year period at the fifth and tenth years, when payment of the certain rent would cease if you abandoned the mining operations.

S. That is a step in the right direction but does not go far enough. We feel very strongly about this matter, and will have to take it up at a high level.

Progress of Development Plans

(*Continued from p. 570, ante*)

Plans Submitted to the Minister

The following is a continuation of the list of plans submitted to date (October 20, 1952). Any objections should be sent to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before the closing date indicated.

111. Cornwall County Council.
Submitted to Minister: August 27, 1952.
(*London Gazette*, August 29, 1952.)
Closing date for objections: October 27, 1952.

112. Isle of Ely County Council.
Submitted to Minister: August 28, 1952.
(*London Gazette*, September 5, 1952.)
Closing date for objections: October 31, 1952.

113. Stockport County Borough Council.
Submitted to Minister: September 22, 1952.
(*London Gazette*, September 26, 1952.)
Closing date for objections: November 15, 1952.

114. Oxfordshire County Council.
Submitted to Minister: September 11, 1952.
(*London Gazette*, September 19, 1952.)
Closing date for objections: November 8, 1952.

115. Anglesey County Council.
Submitted to Minister: September 29, 1952.
Closing date for objections: November 29, 1952.

116. Plymouth County Borough Council.
Submitted to Minister: September 29, 1952.

117. Bedfordshire County Council.
Submitted to Minister: September 30, 1952.
Closing date for objections: November 30, 1952.

118. Herefordshire County Council.
Submitted to Minister: October 9, 1952.
(*London Gazette*, October 10, 1952.)
Closing date for objections: December 12, 1952.

Dates of Local Inquiries

62. Burton-upon-Trent County Borough Council.
Local inquiry: November 19, 1952.

63. Dudley County Borough Council.
Local inquiry: November 26, 1952.

67. Eastbourne County Borough Council.
Local inquiry: November 11, 1952.

74. Dewsbury County Borough Council.
Local inquiry: October 21, 1952.

85. Kent County Council (Part A).
Local inquiry: November 20, 1952.[1]

86. York County Borough Council.
Local inquiry : October 28, 1952.

87. Wolverhampton County Borough Council.
Local inquiry: December 2, 1952.

88. Norfolk County Council.
Local inquiry: November 11, 1952.

94. Barnsley County Borough Council.
Local inquiry: December 3, 1952.

95. North Riding of Yorkshire County Council.
Local inquiry: November 18, 1952.

97. Bolton County Borough Council.
Local inquiry: January 13, 1953.

102. Bristol County Borough Council.
Local inquiry: October 28, 1952.

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[1] This inquiry will open at County Hall, Maidstone, to hear objections and representations in respect of parts of the county for which no town map has been prepared, and of Ashford and the Medway towns. The inquiry will then be adjourned and will reopen on December 11, 1952, at Slater Hall, High Street, Canterbury, to hear objections for Dover, Folkestone, Hythe and district, and Thanet. The inquiry will again be adjourned and will reopen oi January 6, 1953, at the Old Council Chamber, Municipal Offices, Bromley, to take objections for Sevenoaks and district, and West Kent.

Plans Approved by the Minister

The development plans of the following local authorities have now been approved by the Minister and have become operative as from the dates indicated. Any application to the High Court to question the validity of a plan or any provision therein must be made within six weeks from the date when notice of approval of the plan was first published.

9. Blackburn County Borough Council.
Approved (*with modifications*): August 29, 1952.
Operative: September 19, 1952.
(*London Gazette*, September 19, 1952.)

London County Council Inquiry

The County of London inquiry commenced on September 29, 1952, and is now proceeding at County Hall, Westminster Bridge, S.E.1, before Mr. K. S. Dodd, the Minister's Chief Inspector of Special Inquiries, and three other Inspectors. The opening statement made by the Chief Inspector about the conduct of the inquiry, and the opening address on the plan as a whole by counsel for the County Council, have been printed and are available to objectors on application to the Solicitor to the London County Council (Ref. LP/01), County Hall, S.E.1.

There will be opportunities for objectors to put questions of a general as well as of a particular nature when their objections are being heard.

Because of the wide scope of the inquiry and the large number of objections received, the Minister has arranged for the objections to be classified in separate groups, which will be heard separately. These groups are as follows:—

Group I:
1. City of Westminster; 2. Holborn; 3. Finsbury; 4. City of London.
Group II:
5. Wandsworth; 6. Battersea.
Group III:
7. St. Marylebone; 8. Paddington.
Group IV:
9. Stepney; 10. Poplar.
Group V:
11. Greenwich; 12. Lewisham.

Group VI :
13. Kensington; 14. Chelsea.
Group VII :
15. Camberwell; 16. Woolwich.
Group VIII :
17. Hackney; 18. Stoke Newington; 19. Shoreditch; 20. Bethnal Green; 21. Islington.
Group IX :
22. Bermondsey; 23. Deptford.
Group X :
24. Southwark; 25. Lambeth.
Group XI :
26. Hampstead; 27. St. Pancras.
Group XII :
28. Fulham; 29. Hammersmith.

Since opening the inquiry the Chief Inspector has announced that all objections in Westminster and Finsbury must be heard before October 31, 1952. Objections relating to the Borough of Holborn will be heard commencing on October 28, 1952.

The above sequence will probably be followed, but the Inspector may vary the order during the progress of the inquiry to suit the convenience of objectors, their counsel, or officials.

General objections which do not relate to any particular property will be fitted in at convenient times at the discretion of the Inspector. Objectors interested in properties in more than one borough will be given the choice of appearing whenever a borough in which one of their properties is situate is under consideration, or of waiting until the end of the inquiry, when all their properties will be considered together.

All objectors, or their agents, who have signified their intention to attend or be represented at the inquiry, will be notified of the date on which it is expected that one of the Inspectors will begin to hear the borough lists containing their objections. Each objector will also be notified when it is anticipated that his individual objection will be heard. It is not expected that more than about 48 hours' notice will be possible and this will be given either by telephone or letter. Any inquiries by objectors or their agents should be addressed to the Solicitor to the Council (Telephone WAT. 5000, Ext. 6673).

Statutes

London County Council (General Powers) Act, 1952

(15 & 16 Geo. 6 & 1 Eliz. 2, c. viii)

Flag Advertisements

Section 18 of this Act provides that subs. (1) of s. 71 of the London Building Acts (Amendment) Act, 1939, relating to the prohibition of sky signs shall not apply to a flag to the display of which as an advertisement consent has been or is deemed to have been granted in pursuance of any regulations for the time being in force under s. 31 of the Town and Country Planning Act, 1947.

Ministerial Information and Circulars

1. Local Transactions between Local Authorities
2. Local Authority Appropriations

Circular No. 55/52; July 17, 1952

A Ministry of Health Circular dated June 30, 1948,[1] forwarded to local authorities a Treasury memorandum on the provisions of the Act of 1947 affecting transactions in land, and drew attention to some particular points in the memorandum.

A recent circular of the Ministry of Housing and Local Government (No. 55/52; July 17, 1952) states that further consideration has been given to the basis of valuation to be adopted for the purposes of local transactions between local authorities and for local authority appropriations, where difficulties have arisen in a number of cases, and new advice is set out in relation to these matters, to supersede that in para. 6 (*b*) of M.O.H. Circular 129/48.

[1] Circular No. 129/48. See the *Encyclopaedia of the Law of Planning, etc.*, Vol. II, p. 1012.

Central Land Board Practice

Postponement of Development Charge for Agricultural Houses

In Circular 3/52, dated July 14, 1952 (*ante*, p. 510), the Central Land Board announced that they would postpone the payment of the development charge which otherwise would be payable by a local authority in respect of the erection of houses for members of the agricultural population. The postponement will continue so long as the houses covered by it are occupied by persons engaged in agriculture.

A note in a recent issue of the *Municipal Journal*[1] criticises these arrangements, saying that the concession is of little value because the Board insist that each housing estate must be treated as a separate entity. This policy, it is said, is at variance with that followed by the Ministry of Housing and Local Government in paying agricultural grant. Whereas the Ministry disregard tenancy changes and changes of employment so long as the number of houses let by an authority to farm workers remains the same (and the Royal Institute of British Architects have agreed that, in applying their sliding scale of fees, houses within a radius of approximately five miles may be considered to be on one site) the Central Land Board adopt a contrary policy. If a rural district council builds two houses on one side of a road and later, on another planning permission, builds another pair opposite, then the Board regard each pair as a separate housing estate.

This, it is said creates difficulties for the financial officer. If all the council houses in his area were treated as one estate he could close the capital account for a particular project when final costs were known, and he could assume that payment of development charge would be postponed indefinitely provided the authority's total of agricultural tenants was maintained.

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[1] September 12, 1952, at p. 1675.

But under the Central Land Board's system he is faced with a contingent capital liability for postponed development charges which may crystallise whenever an agricultural tenant leaves the land or is replaced by one not engaged in agriculture.

It is also said that difficulties may arise on reletting of houses for which development charge has been postponed. The Board's requirement, in practice, often ties the postponement concession to a particular house. This means that an authority must either relet to a farm worker, which may not be feasible, or else forfeit the advantage of postponement.

There is considerable force in the foregoing objections but it must be remembered that the Central Land Board have a statutory duty to assess and collect development charge, and any arrangements they make under the promise given in Parliament that in certain cases the collection of charge should be postponed, must fit into the framework of the Town and Country Planning Act, 1947. The Board are bound to assess charge in respect of an individual house, or a group of houses covered by a single planning permission. Obviously the average development charge per house in one such group may differ from that in another such group. The agricultural concession, however, relates to the charge in respect of a house which is occupied by an agricultural worker. If the house occupied by an agricultural worker changes within a group of houses covered by a single planning permission, the right amount of charge can remain deferred. If, however, a house reserved for an agricultural worker in one group is transferred to another such group within the rural district, a wrong amount of charge would probably become deferred. Moreover, should the total number of houses occupied by agricultural workers within the rural district be reduced in any year the Board would not know which were the houses in respect of which the development charge was legally recoverable.

Development Charge Valuations Agreed With The District Valuer [2]

Locality of Property.	Type of Development.	Area of Land Involved.	D.C. Agreed.	Special Features.
Crayford, Kent.	Erection of 20 three-bedroom houses, 4 two-bedroom houses, 20 one-bedroom bungalows, 3 two-bedroom bungalows.	3.75 acres.	£1,900.	Land acquired under compulsory purchase order and by agreement.
	Erection of 3 four-bedroom houses, 44 two-bedroom houses, 10 two-bedroom flats, 5 two-bedroom bungalows, 3 one-bedroom bungalows, 1 doctor's house.	7.35 acres.	£2,640.	Compensation assessed in accordance with Part V of the Town and Country Planning Act, 1947: £1,390.

[2] Subscribers are invited to send to this Journal particulars of valuations for the purpose of assessment of development charge *which have been agreed with District Valuers*. The information supplied should be given under the headings as shown above.

Notes of Cases[1]

Court of Appeal

Compulsory Purchase—Land of a Local Authority

Middlesex County Council v. Minister of Housing and Local Government and Islington Borough Council [2] (October 6, 1952). The Court of Appeal allowed this appeal against the judgment of Ormerod J.[3]

The Islington Borough Council made a compulsory purchase order in January, 1949, in respect of 123 acres of the Trent Park Estate, Southgate, which they required for the purposes of a cemetery. In July, 1949, the Middlesex County Council made two compulsory purchase orders, comprising 941 acres of the estate, including the 123 acres comprised in the previous order.

The Minister of Health (now, for these purposes, the Minister of Housing and Local Government), who was the confirming authority for the compulsory purchase orders, arranged for a public local inquiry to be held on November 9, 1949, but two days before this date the Middlesex County Council entered into an unconditional contract to purchase the whole 941 acres from the owner. The orders made by the Middlesex County Council were then withdrawn, and the public inquiry took place only in relation to the order made by the Islington Borough Council. In March, 1950, the Minister modified this order by reducing the area to 43 acres, and confirmed it.

By para. 9 of Sched. I to the Acquisition of Land (Authorisation Procedure) Act, 1946, " a compulsory purchase order shall, in so far as it authorises the compulsory purchase of land which is the property of a local authority . . . be subject to special parliamentary procedure in any case where

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[1] Full reports of these cases will be published in *Planning and Compensation Reports*.

[2] Counsel: *Sir Lynn Ungoed-Thomas*, *Q.C.*, and *J. P. Ashworth*, instructed by the Treasury Solicitor, for the Minister of Housing and Local Government; *Michael Rowe*, *Q.C.*, and *G. D. Squibb*, instructed by the Town Clerk of Islington; *Harold Williams*, *Q.C.*, *J. Ramsay Willis* and *Christopher Hodson*, for the Middlesex County Council.

[3] (1951) 2 P. & C.R. 152; [1951] J.P.L. 550.

an objection to the order has been duly made by the local authority. . . ."

The court (SOMERVELL, JENKINS and HODSON L.JJ.) held that in the circumstances there had been no requirement that special parliamentary procedure under the Statutory Orders (Special Procedure) Act, 1945, should be followed. The provision in the Act of 1946 requires that procedure to be followed where an objection to the compulsory purchase order had been made by a local authority as owners of the land. Such an objection had not been made in this case and the special parliamentary procedure therefore did not apply.

Appeal allowed.
Leave to appeal to the House of Lords refused.

QUEEN'S BENCH DIVISION: DIVISIONAL COURT

Minister's Powers as to Costs on Planning Appeal

Re Wood's Application [4] (October 3, 1952). This was a motion for an order of mandamus.

An urban district council refused a householder permission to use his residence for light industrial purposes. The householder appealed to the Minister of Town and Country Planning, and neighbouring residents were told that an inquiry would be held by a Ministry inspector. The applicant, who lived on an adjacent property and was afraid that her property might be adversely affected if the appeal succeeded and her neighbour granted the permission he sought, was represented by solicitors and counsel at the inquiry and evidence was presented on her behalf. The appeal was dismissed and the applicant applied for her costs. The Minister refused to award her costs, stating in a letter that such costs would only be awarded in exceptional cases. The applicant applied to the Divisional Court for an order of mandamus directing the Minister to award her the costs of her appearance at the inquiry.

The court (HILBERY and FINNEMORE JJ.) held that there was nothing in respect of which mandamus could issue. The Minister had jurisdiction to award costs under s. 104 of the

[4] Counsel: *Edward Terrell*, instructed by Abbott, Thomas & Co., for the applicant.

Town and Country Planning Act, 1947. The letter of the Minister did not indicate any exercise of his powers injudicially but indicated merely a general policy which the Minister would bear in mind in each case. The Minister had considered the particular facts here and had exercised his discretion.

FINNEMORE J. agreed.

Motion dismissed.

MINISTRY OF HOUSING AND LOCAL GOVERNMENT,
WHITEHALL, LONDON, S.W.1
[Telephone: Whitehall 4300]

Minister of Housing and Local Government:
The Right Hon. Harold Macmillan, M.P.

Parliamentary Private Secretary:
J. R. Bevins, Esq., M.P.

Parliamentary Secretary: Ernest Marples, Esq., M.P.

Permanent Secretary:
Sir Thomas Sheepshanks, K.B.E., C.B.

Lands Tribunal Decisions

Claims for Loss of Development Value

Artizans' and General Dwellings Co., Ltd. v. Central Land Board [2] (Ref. CLB/818/1951. October 2, 1952). This was an appeal against a determination by the Central Land Board that there was no development value in the leasehold interest in 73 houses at Willesden, each divided into two tenements. The interest was for a term of 999 years from March 25, 1905, at a rent of £280 per annum.

The restricted value was agreed at £45,000. The appellants contended that the unrestricted value was £66,908, reduced in a revised valuation to £62,800, these valuations being based on a scheme of redevelopment for industrial purposes by the progressive conversion of house property into industrial buildings.

The Tribunal (CECIL H. BAILEY, ESQ., B.SC., M.I.C.E., F.R.I.C.S.) considered that a covenant in the lease to keep the houses in repair would be susceptible of modification subject to an increase of the ground rent to £500 per annum, that planning permission and the requirements of Defence Reg. 68CA would not have caused difficulty, and that it was reasonable to anticipate that the disposal of the present occupants of the houses could be arranged over a period ending about 16½ years from July 1, 1948.

The scheme on which the appellants' valuations were made was thought by the Tribunal to involve an excessive elaboration of hypothetical detail, but was admitted by the District Valuer to be practical and physically not impossible. The Tribunal considered that certain criticisms of the scheme made by the Central Land Board, relating to the estimated rent for the new buildings and the application of the actuarial calculations, were largely misdirected. The issue was whether on July 1, 1948, there were possibilities of industrial development

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1 Full reports of these cases will be published in *Planning and Compensation Reports*.

2 Counsel: *G. D. Squibb*, instructed by Ashurst, Morris Crisp & Co., for the appellants.

of the property, and it was clear that there had been such possibilities.

The Tribunal determined that the unrestricted value was £62,800, and the development value was accordingly £17,800.

Appeal allowed, with costs on the High Court scale.

Determination of Value for purposes of Estate Duty

Gate and Morton v. Commissioners of Inland Revenue (Ref. DET/1/1951. June 18, 1952). This was an appeal against a determination by the Commissioners of Inland Revenue of the value for the purposes of estate duty of premises at Doncaster comprising a three-storey house with a cottage and plot of building land.

The date of death, the material date for the purposes of the valuation, was December 10, 1947. In August, 1948, the property other than the plot of building land, had been acquired compulsorily for the sum of £6,300. A Part VI claim for loss of development value had been agreed at £2,950 (unrestricted value, £9,350; restricted value, £6,300, plus £100 for the building site).

The Tribunal (J. P. C. DONE, ESQ., F.R.I.C.S.) stated that the method of valuation of taking the sum of the agreed restricted value and the market estimate of the ultimate yield on the agreed development value was not appropriate on the material date, although now permissible. The appropriate valuation was the full market price on December 10, 1947, and allowing for the effect of licensing restrictions at that time this was assessed at £9,300.

Appeal dismissed, with costs on the High Court scale.

*Notes of Planning Decisions**

Design of Dwelling-house

The following is an extract from the letter of the Minister of Housing and Local Government dated September 2, 1952, allowing an appeal against the refusal of the Calne and Chippenham Rural District Council to approve the design of a house which the appellant wishes to build at Velley Hill, Gastard, Corsham.

"Mr. Robert Townsend, A.R.I.B.A., said that, apart from complying with his client's requirements, the design was governed by siting, materials and form. The lower walls of the house would be of local stone, the upper being plastered and treated with an ochre tint to match local colouring. Asbestos slates were proposed for the roof because of their adaptability and lightness, and he submitted that they would be in harmony with the local buildings. There were at least three structures with such slates in the district, one being of considerable size. The form of design was circular; there were a number of round houses in the Bath area and Mr. Townsend did not think that this building would be out of character with the Cotswold tradition. The pitch of the roofs had been kept low so that the building would not dominate the adjoining properties.

"On behalf of the council it was stated that the design had been submitted to an advisory panel of architects whose general feeling was that it might be approved although it was not in the traditional style. The council had decided, however, not to follow that advice. Their case was very simple. They did not criticise the design as a design, and they had no doubt that there were sites where it would be reasonable to build the house; but they were not aware of any similar houses in that district, and they considered that it would be completely out of harmony with the buildings at Velley Hill. Being basically circular in shape with a squat horizontal appearance, they felt that it would be in sharp contrast with the vertical lines of the traditional local buildings.

* The Managing Editor desires to express his thanks to those who have been kind enough to send to this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

"The Minister is advised that the design is interesting, and that there is nothing false or sham about it. Clearly there can be two views on the questions whether the building will be pleasing in itself, and whether it will fit in happily with the countryside and with neighbouring buildings. But the Minister considers that planning authorities must be prepared to encourage new ideas in design even though they appear to break with local tradition; and that an honest design, however unusual, which will employ good and appropriate materials, should be disallowed only in the rarest cases where the neighbouring development appears to demand a particular, and different, form. He does not think that that can be said to be true here.

"The Minister, accordingly, allows the appeal."

[By courtesy of the County Planning Officer, Wiltshire County Council.]

Design of Dwelling-house

The following is an extract from the letter of the Minister of Housing and Local Government dated September 29, 1952, allowing an appeal against the refusal of the Maidstone Borough Council to permit the erection of a dwelling-house with a garage on land at the Foley Park Estate, Maidstone. The council had refused permission on the ground that the style of the building proposed would be entirely out of keeping with existing and approved future development and the general characteristics of the locality.

"The appeal site is a plot of land, about 60 by 200 feet, on the west side of Sittingbourne Road (A.249) about a mile north of Maidstone. It is part of a 32-acre building estate with an approved lay-out for 109 houses. Very little development has yet taken place. The site rises sharply towards the north-west and all development there will probably be visible from Sittingbourne Road. It is a very pleasant area and the appeal site commands a splendid view of the North Downs.

"At the inquiry it was stated on behalf of the council that plans for three bungalows on plots adjoining the appeal site had been approved. The council had refused permission for the house proposed by the appellant because they considered its very unusual design would be too much of a contrast with these bungalows.

"The appellant is much interested in modern architecture and has employed an architect to design him a house which appeals to his own taste in architecture. The design is

undoubtedly strikingly in contrast with the designs approved for bungalows which will be built on adjacent plots, but the bungalows themselves are not designed to form a single architectural concept such as, for example, a terrace of houses, and there is no question of the proposed house breaking an otherwise carefully designed unity. In these circumstances, the Minister does not consider it reasonable to withhold consent solely on grounds of unusual appearance, and he has accordingly decided to allow the appeal."

[By courtesy of the Town Clerk of Maidstone.]

Construction of New Access

The following is an extract from the letter of the Minister of Housing and Local Government dated August 14, 1952, conditionally allowing an appeal against the refusal of the Calne and Chippenham Rural District Council to consent to the construction of a new access at New Road, Studley, Calne.

" The appeal premises have a 90 feet frontage to the south side of the London–Bristol Trunk Road, A.4. The site is 3 feet above the level of the road and access to the cottage is by a single wicket gate at the eastern end. It is proposed to form a second access for the appellant's motor cycle at the western end of the plot near the stone shed which serves as a garage. A 6 feet gap has already been made in the retaining wall for this purpose.

" The Minister has carefully considered the facts of the case and the representations of the parties, and has consulted the Minister of Transport. Whilst he considers that it would be wrong to allow unrestricted vehicular access at this point, he is of opinion that the new access is at least likely to be an improvement on the old one, and he feels that it would be unreasonable to deny the appellant the facility he desires. Accordingly, he has decided to allow the appeal to the extent that he permits the formation of the access at the point proposed, subject to the conditions that the existing access shall not be used for any vehicle, and that the width of the new access shall not exceed 5 feet."

[By courtesy of the County Planning Officer, Wiltshire County Council.]

Site for Caravans and Chalets—Danger to Traffic

The following is an extract from the letter of the Minister of Housing and Local Government dated August 5, 1952, following an appeal against the refusal of the Cornwall County

Council to permit the use of land at Millendreath, near Looe, as a site for caravans and chalets.

" The appellant seeks permission to develop the land as a site for caravans and chalets. All services, except sewage, are available in the Class III road and he proposes to equip the site with water closets in a brick building with a ' Tuke and Bell ' system of sewage disposal.

" The county council state that the appeal site is well screened, is of no use to agriculture, with water and electricity available. They feel, however, that the development of the land as proposed is undesirable, because the road in its present condition is of such a nature that the use of the land as proposed would constitute a traffic danger to the public.

" The Minister feels that the council's objections to the proposal from the traffic angle can be largely overcome by limiting the number of caravans to be stationed upon the site to eight caravans and 36 chalets. Any increase in traffic is likely to be confined to tradesmen's vehicles and visitors' cars, and as the council have already approved the use of adjoining land as a car park, it is thought that any increased traffic arising out of the proposed use of the land would not unduly prejudice road safety. Accordingly, he allows the appeal to the extent that he permits the use of the land as a site for eight caravans and the erection of 36 chalets, subject to the conditions (1) that this permission shall not authorise the use of the land as a site for caravans and chalet dwellings except during the period from March 1 to October 31 each year, and (2) the design and siting of the chalets shall be as may be agreed with the local planning authority or, in default of agreement, as shall be determined by the Minister."

[By courtesy of the Clerk of the Cornwall County Council.]

Caravan Site in Residential Area

The following is an extract from the letter of the Minister of Housing and Local Government, dated September 26, 1952, dismissing an appeal against the refusal of the West Suffolk County Council to permit the temporary use of land at the rear of a bungalow as a site for three residential caravans.

" The Minister appreciates the need for residential caravans in the present special circumstances of this area (to house U.S.A.F. personnel and their families) and is glad to learn that the council are taking steps to secure the establishment of a properly equipped site at Brandon to meet this need. He is satisfied, however, that the need ought not to be met

by the siting of residential caravans here and there among existing houses. He is also satisfied, after consulting the Minister of Transport, that the further residential development of this site on a busy Class I road, which is likely to result in more vehicles entering and leaving the road or waiting on it, would, particularly in view of the unsatisfactory nature of the access, prejudice the safety and free flow of traffic on the road. The Minister has, therefore, decided to dismiss the appeal."

[By courtesy of the County Planning Officer, County of West Suffolk.]

Use of Land in Residential Area as Builder's Yard

The Minister of Housing and Local Government has dismissed an appeal against the refusal of the Crayford Urban District Council to allow land at the rear of Crayford Baptist Church, Chapel Hill, Crayford, to be used as a builder's yard.

At a local inquiry, the appellants contended that the area was not solely residential and that the proposed builder's yard would not be detrimental to the locality. They intimated that a temporary consent would be acceptable.

In announcing his decision, the Minister states that the site adjoins a number of houses and the Baptist Sunday School which is now used as a day school. The noise and dust inevitable in a builder's yard could not fail to have a detrimental effect on the school and the houses. Though the Minister sympathises with the appellants in their difficulty in finding a site, he believes that the council were on the whole right to refuse consent to a builder's yard on this site.

[By courtesy of the Public Relations Officer, Kent County Council.]

Vehicle Body as Living Accommodation in Holiday Area

The following is an extract from the letter of the Minister of Housing and Local Government dated September 19, 1952, following an appeal against the refusal of Hampshire County Council to permit the retention of a vehicle body on land at South Hayling.

"At the inquiry the appellant said that he wanted the vehicle body as extra living accommodation for his family or friends at week-ends. He intended to use the two sites as one and did not propose to let off any part. He agreed that the lorry had been rusty when first brought to the site but he had now distempered the exterior and it was no longer an eyesore.

"Eastoke is predominantly a holiday area developed in part residentially, but to a large extent with small dwellings and huts intended for holiday purposes only and, indeed, only suitable as such. He sees no reason why simple structures should not be permitted for such purposes, provided they are of reasonably good construction and appearance, but he agrees with the council that old vehicle bodies converted into makeshift living accommodation are bound to prejudice the character of such an area and he would not be prepared to grant permission for this particular structure to remain any longer than is necessary for Mr. Collier to arrange for it to be removed or replaced by something more seemly. He has decided, therefore, to grant permission for the retention of this W.D. lorry on the plots in question for six months from the date of this letter, subject to the condition that it shall be removed at the expiration of the permitted period."

[By courtesy of the Clerk of the Havant and Waterloo Area Development Sub-Committee.]

Erection of Factory—Land Reserved for Relocation of Non-conforming Industry

The following is an extract from the letter of the Minister of Housing and Local Government dated September 18, 1952, following an appeal against the refusal by the Wembley Borough Council to permit the erection of a factory on land at Alperton, Wembley.

Permission was refused on the grounds that the site should be reserved for the relocation of local non-conforming industries, and that the introduction of a new industrial use into Wembley, which is already over-industrialised, is contrary to the policy for the location of industry.

"The Minister agrees with your council that provision must be made for the relocation of non-conforming industry, and although his final views must await consideration of the county development plan now before him, it does not appear to him that the area of land reserved for this purpose in Wembley is in any way excessive. He has, however, consulted the President of the Board of Trade about the value of the appellants' services to the British film industry, and is satisfied that they provide an essential service to the industry, and that additional processing capacity is urgently required. He accepts the appellants' contention that they cannot operate their business successfully unless they are within easy reach

of the film studios and Central London, and that no satisfactory alternative to the Alperton site can be found. He has, therefore, come to the conclusion that in all the circumstances the needs of the film industry must override the local planning considerations.

"The Minister notes, however, that the site area is about 3¼ acres, and that a building of 60,000 square feet is proposed. In view of the extreme shortage of industrial land in Wembley the Minister considers that this area is excessive, and that a building adequate for the appellants' purposes could be provided on a smaller site, even if this necessitated some part of the premises being of more than one storey.

"Accordingly, the Minister has decided to allow the appeal to the extent that he hereby grants permission for the erection of a factory on the 1½ acres of land shown edged in blue on the attached plan, subject to the condition that the siting, design and external appearance of the proposed building and the means of access thereto shall be as may be agreed by the local planning authority, or in default of agreement, as shall be determined by the Minister."

[By courtesy of the Town Clerk, Borough of Wembley.]

Section 17 Determinations in respect of Development Already Carried Out—Conversion of Lock-up Garages Into Motor Showrooms.

The following is an extract from the letter of the Minister of Housing and Local Government dated September 4, 1952, allowing an appeal against the refusal of the Hendon Borough Council to consent to the retention of alterations to two lock-up garages on land at the rear of premises in Finchley Road, Hendon, and their change of use to a small motor showroom.

"The appellants claim that planning permission is not required for the use under appeal. The Minister is advised that as the alterations to the premises have already been carried out, and as the use has begun, a determination whether planning permission is required or not cannot be given under section 17, which relates to proposed operations and changes of use only. His decision must, in the circumstances, relate solely to the merits of the continuance of the use in question.

"The appeal premises form part of a garage which has been occupied by the appellants since 1933, except for the war years when it was taken over by a builders' merchant. The building under appeal was not returned to the appellants until

1951, although the main business was resumed in 1945. At the end of 1951 the building was converted into a small motor showroom and used for the sale of cars.

"The appellants maintain that the showroom is part of the existing business, which has an established use and which is mainly used by local residents. It had not been alleged that the garage harms the amenities, and the provision of the new showroom would, in fact, improve them, as cars would be sold indoors instead of outside in the forecourt of the garage.

"Your council pointed out that the garage had been formed out of a row of private lock-up garages, others of which still remained. They felt that there was a need for lock-ups and that the appeal building should not have been converted from this use. The area was zoned residential in the draft development plan. A small service garage might be appropriate to a residential area but the use of these premises for a general motor business was an intrusion into the area, which was not the correct place for a motor showroom.

"The Minister has considered with care all the facts and representations before him. In his opinion the use of the appeal premises is ancillary to the main business. The appearance of the building is not unsightly and, by itself, causes no harm to the amenities of the neighbourhood.

"The Minister has accordingly decided to allow the appeal."

[By courtesy of the Town Clerk, Borough of Hendon.]

Time Limit Condition Where Redevelopment Proposed But Unlikely for 20 Years

The Minister of Housing and Local Government has allowed an appeal against the refusal of Dartford Borough Council to permit the use of premises in Overy Street, Dartford, as tea-rooms and a restaurant for an indefinite period.

Permission was refused because the property was in an area subject to redevelopment, and the development was already regulated, by a permission granted for a limited period to December 31, 1955.

At a local inquiry held into the appeal, the council stated that the proposed ring-road to relieve traffic congestion in the centre of the town might necessitate demolition of the property. The exact line of the road, which was unlikely to be completed for at least 20 years, had not been determined,

but, if it could be conveniently routed so as to avoid "The Jolly Miller," this would be done.

In the light of this statement by the council the Minister considers that it would be unreasonable not to grant an unlimited permission for the use of the premises as tea-rooms and a restaurant.

[By courtesy of the Public Relations Officer, Kent County Council.]

Condition Requiring Avoidance of Damage to Sewers

The following is an extract from the letter of the Minister of Housing and Local Government dated July 9, 1952, allowing an appeal against the condition imposed by the St. Albans City Council on the permission for the erection of a dwelling-house and garage at Faircross Way, St. Albans. Permission was granted subject to the condition "that the development shall be so executed as to avoid any disruption thereby, whether at the time of the development or subsequently, of sewerage arrangements in the area by reason of damage to public sewers which cross the land."

"The Minister is of the opinion that the condition imposed by your council is improper since it concerns matters which should not properly be dealt with under the Act, and also that it would be incapable of enforcement. He has, accordingly, decided to allow the appeal and to discharge the condition."

[By courtesy of the County Planning Officer, Hertfordshire County Council.]

Discontinuance of Normal Use of Premises

The following is an extract from the letter of the Minister of Housing and Local Government dated October 14, 1952, following an appeal against the determination by the Lancashire County Council that the use of Laneshawbridge Mill, near Colne, as a cotton mill would involve a material change of use, constituting development and requiring planning permission.

"The appeal premises are said to have been erected about 100 years ago as a cotton mill and to have been used as such until 1931. They then stood empty until 1941 when they were taken over by the Admiralty and used for storage purposes, for the manufacture of crates and for some assembly work. At the appointed day they were in use partly for weaving and partly for various storage uses by several firms and some such mixed use prevails at the present time.

" Your council's determination was based on their opinion that the existing use of the premises as a cotton mill lapsed under the provisions of s. 53 of the Town and Country Planning Act, 1932, when the premises were unoccupied from 1931–1941. In the Minister's opinion, however, the definition of existing use in s. 53 of the Town and Country Planning Act, 1932, has no relevance to the determination as the term " existing use " had no significance in that Act other than in connection with assessment of compensation. In his view, since the premises were erected as a cotton mill and have been so used for 80 out of the 100 years of their life, their use as a cotton mill can be regarded as their normal use. Accordingly he determines that resumption of their use as a cotton mill does not require permission by virtue of s. 12 (5) (*a*) of the Town and Country Planning Act, 1947, and allows the appeal."

[By courtesy of Messrs. Carr, Sons & Hindle, Solicitors, Colne.]

Conversion of Disused Gravel Pit to Watercress Beds

The following is an extract from the letter of the Minister of Housing and Local Government dated August 23, 1952, giving his decision on appeals made under s. 17 of the Act against the determinations of the Rickmansworth Urban District Council and the Watford Borough Council that the preparation and formation of watercress beds at Rousebarn Lane, Watford, constitutes development within the meaning of the Town and Country Planning Act, 1947, and that permission in respect thereof is required under Part III of that Act.

" The appeal site is a disused gravel pit filled with water lying partly within the Borough of Watford and partly within the Urban District of Rickmansworth, immediately to the east of the existing watercress beds owned by your clients.

" The Minister notes that the use of the appeal site, which was originally agricultural, was changed to that of a quarry in 1925. There is no evidence that it has reverted to agricultural use since that time, although water is drawn off for the purpose of feeding the existing watercress beds.

" The Minister is advised that your clients' proposals which involve the filling-up of excavations in land not in agricultural use constitute development within the meaning of the Act and require permission."

[By courtesy of the County Planning Officer, Hertfordshire County Council.]

Practical Points

All questions for consideration should be addressed to "The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of the replies.

390. *Claims for loss of development value—apportionment*

A parcel of purely agricultural land has been purchased for the purpose of erecting a private residence, for which planning permission has been granted, the area of the plot being 80 acres. The contract for sale provided for an assignment of the vendor's Part VI claim which is £450 for some 20 acres. It is understood that for practical purposes the compensation applies only to the frontage to the road which would accommodate about 20 further plots of similar frontage. The plot forms part of a large field and is self-contained in that it is bounded on one side by road and on the other sides by copse.

The purchaser wishes to set off the claim which is to be assigned to him against development charge in accordance with the practice approved by Mr. Boyd Carpenter in the House of Commons on May 26 [1] and is endeavouring to agree the proportion of the vendor's claim which is to be assigned.

The vendor has offered the sum of £22 10s. 0d. which we, on behalf of the purchaser, contend is quite insufficient on the following grounds:—

1. The proposed development is the first in this field and therefore constitutes a greater development from agricultural use than would any subsequent development.

2. The principle of compensation is intended to cover the early years of the operation of the Act and will be of no practical advantage to a developer some years hence, and a present developer therefore merits a substantial proportion of a vendor's claim.

The vendor contends that as the building plot is now sealed off against the rest of the field it is the next plot to be

[1] See *ante*, p. 409.

developed which would make the greater development from agricultural use. [S. R. & L.]

ANSWER

Apportionments of claims are matters for agreement between the parties and are not the concern of the Central Land Board; see [1950] J.P.L. 35. This being so, it seems reasonable in this case for the £450 to be apportioned between the purchaser and the vendor in the proportion which the area of the building plot now purchased bears to the whole of the frontage land of the vendor (unless the plot in question has some special attraction). I feel that area is probably the fairest criterion of apportionment, and that the arguments set out by the inquirer are really too problematical and are incapable of precise evaluation. [J. F. G.]

391. *Development—portable stall in curtilage of public house*

We are acting for a client who has put up, within the curtilage of a licensed public house, a portable stall for the purpose of selling shell fish. He has, of course, the permission of the licensee to do this.

The local authority tell us that planning permission is required for this and that it comes within the definition of "a temporary building." Our contention is that it is a portable building as it can quite easily be moved and is in no way fixed to the ground. We also contend that as the licensed premises have got an off-licence and also sell snacks, there is no difference between selling snacks, including shell fish, over the counter of the premises and on the stall. [B. & S.]

ANSWER

I am of the opinion that no change of use is involved in the placing of a portable stall within the curtilage of the building in view of the fact that similar sales are carried on behind the counter. The placing of a portable stall does not constitute development of itself. A public house does not come within the meaning of shop within the Use Classes Order, but this does not affect subsidiary sales which go with the consumption of beer. [R. P. C.]

392. *Planning permission—garage and covered way*

A garage has been proposed in connection with an existing dwelling-house, and as it is within 1,750 cubic feet in capacity

it will be permitted development, but in addition it is proposed also to provide a covered way between the garage and the rear entrance to the house.

The cubic capacity of the garage and covered way together will exceed the cubic capacity allowed in para. 1 of Class I of Sched. I to the General Development Order, 1950. I should, however, like to have your opinion as to whether it could be considered that the garage alone, being within 1,750 cubic feet capacity, would be permitted development, and that the covered way would also be permitted development as coming within para. 2 of Class I, being the erection of a building or enclosure "required for a purpose incidental to the enjoyment of the dwellinghouse as such." [F. T.]

ANSWER

Having regard to the definition of "building" in the Order, I can see no reason why the structure forming the covered way should not fall into para. 2 of class I. I think it would fall within para. 2 rather than para. 1 if not erected at the same time as the garage, and I can see no reason why contemporaneous erection should produce a different answer. [W. A. L.]

393. *Planning permission—use of premises as a whole*

Clients of mine are the owners of a property formerly occupied as to:—

(a) the front portion of the ground floor as a retail shop carrying on the trade of baker and confectioner;
(b) the remainder of the ground floor as a bakehouse (slightly larger in area than the shop portion);
(c) the upper floors as storage in connection with (a) and (b).

The bulk of the baking was sold through the shop, the rest mainly going to hotels, etc. My clients now wish to occupy the whole of the ground floor as a retail shop, and planning consent for this has been granted.

In my view the main user of the ground floor was retail shop and the bakehouse was incidental to that use, in which circumstances I maintain that if the whole is used as a retail shop a material change of use does not occur. [F. M.]

ANSWER

From decision No. 18, reported in Bulletin of Selected Appeal Decisions No. X (*ante*, p. 55), one has to look at the use

as a whole. The use in the present case is primarily a retail shop and the whole premises can accordingly be used for that purpose. [W. A. L.]

394. *House requisitioned by local authority—liability to neighbours for acts of tenants*

A local authority has requisitioned a house and installed homeless tenants. These tenants are unsatisfactory people and they are destroying the fence which belongs to the owner of the next-door house and using it as firewood. The owner of the adjoining house has reported this to the local authority, claiming that the authority should compensate him for the damage done by the people installed by them in the adjoining house. The local authority repudiate all liability. It is useless the house-owner suing the tenants as they are not worth powder and shot. Can you refer me to any authority on which a legal claim can be made against the local authority? When the house is de-requisitioned and the local authority has to make good any damage done to that house, would that damage cover the fence which has been destroyed although it belongs to another owner? I do not think it can be contended that the tenants are the agents of the local authority.

[J. F. C.]

ANSWER

This case seems to fall precisely within *Att.-Gen.* v. *Corke* [1933] Ch. 89, in which Bennett J. held that the rule in *Rylands* v. *Fletcher* (1868) L.R. 3 H.L. 330 applied. This has been criticised (see Winfield, *Textbook of the Law of Tort*, 5th ed., p. 489; *Clerk and Lindsell on Torts*, 10th ed., p. 596), but it seems to be agreed that there is in such a case a liability in nuisance. [J. B.]

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"Planning Law" Notes

The Government have published a White Paper (Cmd. 8699) which we publish in full at p. 651, *post*, setting out their proposals for the amendment of the Town and Country Planning Act, 1947, and the corresponding Scottish Act. Under the terms of an interim Bill, introduced into Parliament on November 18, 1952, development charge is to be abolished, and the £300 million fund will not be distributed. (The Explanatory and Financial Memorandum to the Bill is published at p. 676, *post*.)

Under legislation which it will not be possible to introduce until the autumn of 1953, compensation will be paid (but not before the autumn of 1954) in respect of planning restrictions placed on development, other than those based on the principle of good neighbourliness, but the compensation will be limited in amount to the 1947 development value as admitted for the purposes of a claim on the erstwhile £300 million fund. Compensation for compulsory purchase is to be existing use value plus the 1947 development value.

It is too early to form any considered opinion on the proposals, but at first glance they give the impression of having cut the Gordian knot and although they will undoubtedly give rise to a crop of fresh problems they do introduce a measure of realism into the sale of undeveloped land. The assumption that land would freely change hands at existing use value is recognised to have been a false one.

The implications of the proposals will be considered in this Journal from month to month during 1953. Subscribers are invited to send to the Managing Editor details of circumstances within their knowledge where the proposals are likely to cause difficulty, hardship or injustice.

Bulletin of Selected Appeal Decisions No. XI has now been issued (H.M.S.O., 6d. net) and the Department of Health for Scotland have issued the first of a similar series of Bulletins of appeals to the Secretary of State for Scotland.

These Bulletins will be summarised in a subsequent issue.

A correspondent has drawn attention to a passage in the article by Mr. Desmond Heap on the Town Development Act, 1952 (*ante*, p. 538) which states that a district council undertaking town development may, if it is thought desirable, provide public services and places for public worship, recreation and amenity.

Mr. Heap now writes: "On looking further at s. 1 (1) of the Town Development Act, 1952, I agree with the interpretation of that subsection as given by your subscriber. I am obliged to him for drawing attention to the fact that whilst, on undertaking town development, there is a discretion as to the provision of accommodation for the carrying on of industrial or other activities, it is essential that such development shall not only provide housing accommodation but shall also make provision for all appropriate public services, facilities for public worship, recreation and amenity, and other requirements."

The address of the headquarters of the Central Land Board and the War Damage Commission is now: 6 Carlton House Terrace, London, S.W.1.

The Research Committee of the Town Planning Institute, under the Chairmanship of Mr. E. H. Doubleday, have prepared a report entitled "The Economics of Central Area Redevelopment." This is published by the Institute (2s.) and is designed to assist local authorities who are engaged upon the redevelopment of "blitzed" central areas.

The Parliamentary Secretary to the Ministry of Housing and Local Government, Mr. Ernest Marples, recently drew attention to the possibility of using gaps and undeveloped sites within existing urban areas for housing purposes. He said that the tendency in development plans was to allocate new land for housing when old land could still be used without abandoning the accepted standards. It is essential that even the beginnings of decay and waste at the heart of a town should not be condoned, whilst growth continues at the extremities.

"Practical Points" reach their fourth century in this issue. There does not seem to be any falling off in the number of interesting and often intricate points which crop up in practice, and we have space to print only a small selection from our postbag. With the announcement of legislation to effect substantial amendment of the law, it seems likely that the number of legal problems will be increased rather than diminished—or is it unduly pessimistic to think that any amendments can only be achieved at the cost of new complexities?

Mr. T. A. Blanco White contributes the following :—

"*Mead* v. *Chelmsford R.D.C.* [1952] W.N. 476[1] (also reported sub nom. *Mead* v. *Plumtree* [1952] 2 All E.R. 723) was an appeal by case stated to the Divisional Court in a case indistinguishable from *L.C.C.* v. *Cole* (noted *ante*, p. 231). The court decided that if an enforcement notice is served which is defective (like the notice in *Burgess* v. *Jarvis* (1952) 2 P. & C.R. 377; noted *ante*, p. 230) as not setting out distinct periods for its coming into force and for compliance with it, the person on whom it is served may ignore it, relying upon its invalidity as a defence against any subsequent action by the local planning authority. Thus *L.C.C.* v. *Cole* was wrongly decided,[2] for the reasons explained *ante*, p. 252. More broadly, the court decided that in any case of invalidity of an enforcement notice, except where the ground of invalidity is one of those listed in s. 23 (4) of the Town and Country Planning Act, 1947, as founding an appeal from the notice under that section, the person on whom the notice is served may ignore it, relying upon its invalidity. The court explained that the case of *Perrins* v. *Perrins* (1951) 1 P. & C.R. 457,[3] which lays down that those who have failed to appeal against an enforcement notice cannot afterwards challenge it in a prosecution for failure to comply with it, applies only in so far as the grounds upon which it is sought to challenge the notice are grounds listed in s. 23 (4) as justifying an appeal against the notice.

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[1] Noted *post*, p. 678.

[2] *L.C.C.* v. *Cole* itself has since been sent by the Divisional Court back to Sessions with a direction to allow the appeal; no argument was offered in view of the decision here noted; see *post*, p. 679.

[3] [1951] J.P.L. 354.

"The court emphasised in the course of its reasoning that s. 23 makes no provision for appealing against a notice upon the ground that it is a nullity for reasons other than those listed in that section; but the question whether, if an appeal is brought against a notice, and if on hearing the appeal the magistrates decide that the notice is a nullity for reasons other than those of s. 23 (4), the magistrates then can or should quash the notice, was not before the court in the present case, and is consequently not concluded by it. It will be remembered that in the case of *D'Alessio* v. *Enfield U.D.C.* (1951) 2 P. & C.R. 166 (noted [1951] J.P.L. 660), the Divisional Court sent an appeal under s. 23 back to justices with a direction to quash the notice although the defect was one that was apparently purely formal and outside s. 23 (4): *viz.*, that the notice referred to 's. 23 and s. 75' instead of 's. 23 and s. 76.' That case also, however, is no real authority upon the question whether there is jurisdiction to quash in such a case, and for two reasons: first, that the point was not raised; and secondly, that the notice having been served 'by virtue of s. 75,' there probably was (under s. 75 (5), which was not referred to in the judgment of the Divisional Court) a jurisdiction to quash. The point is an important one, since to invite a prosecution hoping it will fail (which is what ignoring an enforcement notice amounts to) is not a line of conduct that everyone would wish to adopt; a clear decision that he might if he wished (but in general need not) appeal against any enforcement notice he believed to be invalid would be much more satisfactory to the ordinary occupier of land. As s. 23 is worded, however, any clear decision would be rather more likely to go the other way."

The reference at p. 590, *ante*, to Sir George Pepler as being the President of the Town Planning Institute was incorrect. Sir George was the President of the Institute's Summer School at Bangor, to which the paragraph related, but the President of the Institute at that time was Mr. E. H. Ford.

Reports during the last 12 months that agricultural land has been stripped of turf in some parts of the country have seemed to indicate either that the provisions of the Act of

1947 as to what constitutes development are not sufficiently wide in relation to this operation or that the enforcement procedure is defective in that it is too slow to prevent the misuse of the land.

A Private Member's Bill to remedy these defects in relation to turf-stripping (The Agricultural Land (Removal of Surface Soil) Bill: [1952] J.P.L. 406, 471) was introduced during last session of Parliament, but failed to become an Act in that session, and has now lapsed.

More than five years have now elapsed since the Town and Country Planning Act, 1947, became law, and with this issue the fifth volume of the Journal is completed. If the public in general still know little of the Act, the not inconsiderable body of professional and administrative men and women concerned with the use of land—surveyors, valuers, auctioneers, lawyers, civil servants and local government officers—not to mention the landowners—have gradually become familiar with at least the main provisions and general purport of the legislation.

The ensuing year promises to be one of considerable interest to all concerned with planning—and there is little doubt that it will mark a definite new stage in the history of planning legislation in this country. Amending legislation has now been placed before Parliament, and the amendments are to be far-reaching in nature. Further legislation is to be introduced next autumn. Meanwhile, development plan inquiries are being held in many parts of the country, and 13 plans have so far been confirmed by the Minister. Many planning appeals continue to give rise to interesting and important points, the decisions on which are often of considerable value in subsequent cases.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Journal. They should be sent to the MANAGING EDITOR, *Journal of Planning Law*, 3 CHANCERY LANE, LONDON, W.C.2. *Every attempt will be made to return drafts or unsuitable copy but no guarantee can be given in this respect. Books for review should be sent to the Publishers at the above address.*

The White Paper—Proposals for the Amendment of the Town and Country Planning Act, 1947

(Cmd. 8699)

Presented to Parliament by the Minister of Housing and Local Government and the Secretary of State for Scotland by Command of Her Majesty. November, 1952.

Part I.—Introduction

1. Her Majesty's Government have had under review the financial provisions of the Town and Country Planning Act, 1947, and the Town and Country Planning (Scotland) Act, 1947.

2. These provisions do not differ very greatly from the proposals contained in the White Paper on the Control of Land Use (Cmd. 6537) which was laid before Parliament by the Coalition Government in 1944. But in operation they have attracted a great deal of criticism from many different quarters; from local authorities, from representatives of industry and commerce, from professional bodies, from property owners, large and small, and from many private people anxious to build themselves a house or to engage in some other enterprise. It is generally agreed that the experience of four years has revealed serious practical difficulties in the working of the financial provisions.

3. Exercise of control over land use affects land values by altering the prospects of profitable development. Refusal of permission to develop land means loss for the owner; the grant of permission means gain. The 1947 Acts made an attempt to settle the finance of planning, and to enable the planning authorities to control the use of land without looking over their shoulders at the possible cost of every decision. Before the war payment of compensation for loss due to planning restrictions was a matter for the local authorities, who in theory could recover some part of the increased value accruing elsewhere (betterment). In practice they failed to recover betterment, and they were unable, particularly during the period of building boom when development values were

high, to face the expenditure entailed by a full exercise of their power to restrict undesirable development. How ineffective the control was may be seen—to take only one example—in some of the outer suburbs of London, stretching over first-class market garden land and irreplaceable gravel deposits.

4. This problem was analysed in the Report of the Uthwatt Committee published in 1942 (Cmd. 6386), and summarised in the White Paper of 1944. The solution adopted by the 1947 Acts was to pool the development values of all land by transferring them to the State, and to make developers pay a development charge, the charge being in effect the cost of buying back from the State the development value in respect of the development permitted. The system has three main features—

(i) no development [1] may be carried out without planning permission and, subject to certain exceptions, when permission is granted a development charge must be paid on the increase in the value of the land due to the grant of permission;

(ii) payment is to be made, by July 1, 1953, out of a £300 million fund, to anyone who can show that his interest in land was materially depreciated in value by the Acts, and no compensation is payable except in special cases when planning permission is refused;

(iii) the price at which land is bought by compulsory purchase is its value for its existing use: in other words, development value is excluded.

5. Her Majesty's Government intend to maintain the full control over the use of land provided for in the Acts. It is even more necessary now than ever before to prevent building over good agricultural land or over land containing valuable mineral deposits; to restrain the outward sprawl of the great towns; to improve living conditions and industrial efficiency; to preserve the countryside and coast line from further disfigurement and destruction. The question which the Government have had to consider is whether it is possible, while maintaining these powers unimpaired, so to adjust the financial provisions as to reduce or get rid of the difficulties

[1] Development is very widely defined. It includes any building, engineering or mining operations and any material change in the use of buildings or land.

which have arisen in practice; and to do this while maintaining a limit on the cost to public funds, and without bearing too hardly on private individuals.

6. The conclusion to which Her Majesty's Government have come is that amendment which will fulfil the essential purposes of the Acts of 1947, but which will get rid of the worst difficulties in the financial provisions, is possible. Their proposals, in broad outline, are set out in Part III below. In order that these may be better understood, the difficulties in the existing system are described in Part II.

Part II.—The Practical Difficulties of the Existing Financial Provisions

7. It should be stated, at the outset, that the difficulties which have arisen are not due to defects of administration. The Central Land Board, aided by the Valuation Office, have done everything possible within the provisions of the Acts to make them work smoothly, to temper their impact in hard cases, and to help people to understand the underlying principles. The Board and their advisers have had a most difficult task, and the Government wish to place on record their appreciation of the work of all concerned.

8. The difficulties may best be described by reference to the main features of the 1947 system—

(i) *The £300 million fund*

9. At one time it was suggested that the £300 million fund might be quite insufficient to meet claims in respect of depreciation in land values. Most of the claims made to the Central Land Board have, however, now been assessed; and it appears that the total will be of the order of £350 million. Some claimants have been promised preferential treatment; their claims are unlikely to exceed £100 million. Once these have been met, the fund would enable the remainder to be paid at something like 16s. in the £.

10. Under the Acts as they stand payments from the fund are due to be made before July 1, 1953. To make all these payments in the next few months would have a considerable inflationary effect. Moreover, payment would benefit many owners who have little or no case for payment. Some of those who hold claims have not suffered any loss as a result of the Acts because they have already recovered the development value of the land by selling at a high price, or because they

do not want either to sell or to develop the land; they may even have bought it for the express purpose of preventing its development. In other cases the development value could only be realised at the expense of neighbours or of the community (*e.g.*, by extending a building, or changing its use, to the detriment of neighbouring properties, or by developing in such a way as to throw an unreasonable burden on public services). It would be reasonable to prevent this sort of development without any payment of compensation at all, as indeed was done under the 1932 Acts. But perhaps the main difficulty in paying out all at once is that if that is done it would be exceedingly difficult for any future Government ever to make radical changes in the financial provisions, however badly they were working. For all the holders of claims on the fund would have been compensated for loss of development value—those who will be allowed to develop their land as well as those who will not.

(ii) *Purchase at existing use value*

11. All transactions in land should, on the theory of the Acts, take place at or around existing use value. But, except where compulsory powers are available, few owners will sell land for development at no more than it is worth for its existing use; naturally enough, since a sale on that basis will not recompense them for the disturbance and expense involved. In these circumstances most owners feel that they would do better to keep their land, and one result of the Acts has been that little land is being offered for development.

12. Where, however, the developer pays more than existing use value, as the private developer commonly must, the effect is to increase his outlay on the land above what it would have been had the Acts not been passed, since development charge has also to be paid and is in effect part of the purchase price. To that extent the Acts have increased the cost of private development. The Central Land Board have certain powers of compulsory purchase which they can use to ensure that land changes hands on the basis of value for existing use; and on occasion they have, when approached by a prospective developer, acquired compulsorily on his behalf land which the owner was offering for sale at a price which was unreasonable in view of the developer's liability to pay development charge. But intervention of this kind in transactions between individuals is invidious and at best haphazard; while the existence of the power of compulsory purchase at existing use value

contributes to the reluctance of owners to offer land for development at all.

13. To the extent, therefore, that the existing use value basis is effective it has tended to keep land off the market; and to the extent that it has been ignored the cost of development has risen. Public authorities with their powers of compulsory purchase can, it is true, buy the land they need at existing use value, and in recent years they have been responsible for a large proportion of the building which has been done. But private developers, whose activities the Government desire to encourage, have been severely hampered through being unable to obtain land for development at prices which take sufficient account of their liability to development charge.

(iii) *Development charge*

14. Development charge was intended to secure for the community increases in the value of land due to planning decisions or public improvements, so that they could be set against the cost of paying compensation; and at the same time to hold the scales evenly between those who were allowed to develop their land and those who were not. Making every allowance for the teething troubles of a new system, four years' experience of the working of the system has shown that few people really grasp the underlying theory, and that there is, in any event, a wide gap between theory and practice.

15. In theory the man who pays development charge is merely buying from the community the development value which he would otherwise have had to buy from the owner of the land. But this separation of development value from the land is too difficult for most people to grasp; to them the potentialities of a site are inherent in it. Consequently, they consider it reasonable to pay the owner a high price for a good site and, having paid it, regard the Central Land Board not as an owner with something to sell, but as a tax collector whose demands are a burden on their enterprise. When a man buys land the price he pays depends on his own bargaining power and the owner's willingness to sell. If he does not like the price asked he can go elsewhere. But there is no escaping development charge; and the man who does not have to buy but wishes to develop his own land feels a special grievance.

16. The public dislike of development charge has been increased by the fact that the Government has required settlement in cash and in full, whereas payment on the claims

on the £300 million fund was deferred. For those developers who hold claims on the fund the impact of the charge has been reduced since the announcement that the Central Land Board would accept the claims as security for the charge up to 80 per cent. of their agreed value. But this easement does not by any means apply to all developers and is in any case temporary: setting-off the charge against the claims in this way will not be possible when the fund has been distributed and the money has been spent or locked up in some investment. As time passes and the prospects of development concentrate and mature in particular places, the gap which in many cases already exists between the amount of the claim and the amount of the development charge will grow wider. The theory on which the charge is founded will seem even more elusive, and in practice the collection of development charge will have to be made in the face of increasing public resistance.

17. The real effect of development charge on the cost of development varies. As already explained, land for development has not, generally speaking, changed hands at or near its value for its existing use; and to the extent that it does not do so the charge represents a burden on the development. A few landowners have sold on the existing use value basis, but in most cases the price paid has included a part, sometimes even the whole, of the development value; and in many of these cases the owner has retained the claim on the £300 million fund. To some extent conditions during the past few years have been exceptional, because the substantial scarcity value attaching to a building licence has made developers willing to pay a high price for land. But even when this special factor is removed the buyer will still have to pay a premium above existing use value sufficient to persuade the owner to sell, and development charge at 100 per cent. must entail a permanent addition to the cost of development. The real addition may not be very great, but with the cost of developing as high as it is today any addition is a matter for concern; and sometimes the extra burden seems to the developer prohibitive.

18. Another objection to development charge is that its basis is uncertain. Since it is assessed on the difference between the value of the land without permission to develop and its value for the development permitted, the amount of the charge is inevitably a matter of judgment and valuation —and therefore for negotiation, in the same way as the price

of land is a matter for negotiation. In some cases quite small adjustments in the two values during the process of such negotiation will have a very large effect on the amount of development charge finally assessed. This is inherent in the nature of the charge, but the effect is to destroy confidence in its validity. Those who view development charge as a tax on development—and they are in the great majority—look for some definite relation between the amount assessed and the cost of the land or of the development; and their failure to find any makes them very critical of the method of assessment.

Possible Modifications

19. Over the past few years many suggestions have been made for the modification of the Acts in order to provide some incentive to owners to sell land for development or to develop their own land and to reduce the difficulties associated with development charge. The Government have examined in great detail all the proposals which have been brought to their notice, and have been much helped by them in their review of the financial provisions. Three suggestions in particular have engaged their attention: the deferment of payments from the £300 million fund; the complete exemption of particular classes of development; and a general reduction of the rate of the charge.

(i) *Deferment of payment*

20. It has been suggested in a number of quarters, notably by the Royal Institution of Chartered Surveyors, that the £300 million fund should not be paid out as the Acts require, but that instead holders of admitted claims should be given deferred payment certificates which would become payable when the land is compulsorily acquired or permission to develop is refused, and which would be accepted in payment of development charge at their full face value. This proposal was designed to avoid the inflationary effects of paying out the £300 million with interest, and at the same time to provide owners of land approved for development with an incentive to develop or to sell the land with the relevant certificate, those being the only means of realising the certificate. The extent to which the Government accept this proposal will be seen from Part III.

(ii) *Exemption of particular classes of development*

21. The exemption of particular classes of development, in particular of private housing and of all changes in the use of buildings, has been widely suggested. The various possibilities have been examined but the conclusion reached is that no substantial exemptions could be made without giving rise to difficulties as great as those which now require solution. Development charge on private housing could not be abolished without upsetting the basis for assessment of the charge on municipal housing—and indeed on many other forms of development—and reducing the income from development charge to a negligible amount. About 70 per cent. of the amount collected on account of development charge comes from house building, public and private. Development charge on changes of use and on extensions could not be abolished without penalising new buildings by comparison with old. Moreover, any wide extension of exemption would destroy the basic theory of the financial provisions : to prevent owners being compensated for rights which they were not losing it would be necessary to exclude the corresponding development value from the claims on the £300 million fund.

(iii) *Reduction in the rate of development charge*

22. A reduction in the rate of development charge has been advocated as a means of enabling developers to provide the owner of land with some incentive to sell it for development without increasing their costs above what they would have been had the Acts not been passed. Amendment on these lines has considerable attraction, though the reduction would have to be substantial to be effective—say to 75 per cent. or 50 per cent. It would probably have to be coupled with deferment of payment to prevent the Exchequer having to pay in full or nearly in full for development values which they would subsequently sell at the reduced rate.

23. The main difficulty in this proposition is that there can be no certainty that, even with a heavy reduction in the amount of development charge, land would normally change hands at a price that took account of the developer's liability to pay whatever charge was levied. Vendors of land, like vendors of any other commodity, will always get the best price that they can, and the development charge, however small, would in effect be passed on, in whole or in part, to the ultimate user of the land.

24. Moreover, the problem is not merely one of easing the market in land: the Government are anxious to encourage people who already own land suitable for development to make use of it. Development charge even at a reduced rate would act as a deterrent, and would add to development costs. If reduction in the rate of the charge were accompanied by deferment of payment of claims on the fund so that development charges were set off against claims, those who held claims on the fund and found themselves with little or nothing to pay would not be much affected; but even a reduction of 50 per cent. would not avert the difficulties which must arise when the charge begins greatly to exceed the corresponding claim on the fund. Nor, if the rate of the charge were to be reduced, is there any clear principle why it should stand at any particular figure; the process of reduction, once begun, would be difficult to stop.

Conclusion

25. For all these reasons the existing financial provisions appear to the Government to be unsatisfactory in themselves, and incapable of being sufficiently improved by modification. In particular, development charge is too unreliable an instrument to act as the linch-pin of a permanent settlement. Accordingly the Government have reached the conclusion that a mere adjustment of the financial provisions is unlikely to provide a stable solution; and they have decided that more drastic alterations must be made.

Part III.—The Government's Proposals

26. In the barest outline, Her Majesty's Government propose—

(1) to abolish development charge altogether;

(2) not to pay out the £300 million fund, but to pay compensation for planning restrictions (subject to certain exceptions) as and when development of land is prevented or severely restricted;

(3) to use the once-for all reckoning of the 1947 Acts as setting the upper limit of compensation payable for loss of development value—*i.e.*, compensation for planning restrictions will not exceed the value of the claim ranking for payment from the fund, and compensation for compulsory acquisition will be based on the current value of the land for its existing use at the

time of the acquisition plus any unexpended part of the claim (see paragraph 28).

These proposals are explained in more detail in the following paragraphs.

Abolition of Development Charge

27. Her Majesty's Government are introducing immediately a Bill [2] which will abolish development charge as regards all new projects. The Bill will provide that no charge shall be payable in respect of development begun on or after the date of introduction, except where it has been included in a determination of development charge, or an application for a determination, with other development carried out before that date.[3]

Compensation at 1947 Values

28. The essence of the Government's proposals is to turn the " payments for depreciation " of the 1947 Acts into compensation payments which will not be made until loss is actually sustained.[4] They propose to pay for loss of development value up to 100 per cent. of the value of claims admitted by the Central Land Board as qualifying for payment from the £300 million fund.[5] This will apply to compensation for compulsory purchase as well as to compensation for planning restrictions. Where some part of the admitted claim has already been used to compensate for a partial restriction of development, the amount payable on complete restriction or on compulsory acquisition will be correspondingly reduced. Some types of restriction will not, however, carry any right to compensation (*vide* paragraph 35). Additional compensation will be paid for abortive expenditure incurred in good faith on the strength of a planning permission which cannot be used because of a subsequent compulsory acquisition.

29. Put in other words, the Government's decision is that it is reasonable to pay compensation for loss of development value which accrued in the past—up to the point where the 1947 axe fell—but not for loss of development value accruing in the future. If this principle were not maintained effective

[2] Introduced on November 18, 1952.
[3] This is done by clause 1 of the Bill.
[4] Clause 2 of the Bill provides for dealing with this subject by subsequent legislation. Clause 3 deals with anomalies during the period before such legislation becomes operative.
[5] The expression " admitted claim " is used subsequently in this paper.

control of land use would again become impracticable, as it was before the war. For the cost of compensation for restrictions, if it always had to be paid at the peak value, would be crippling.

30. The question what compensation should be paid on compulsory acquisition is more difficult. But in practice the choice must lie between acquisition at current market value and acquisition, as proposed, at the current existing use value plus the 1947 development value. When development plans have been approved, the market value of land will depend in large measure on the prospects of profit from the uses for which, in the light of the plan, permission is likely to be granted. Payment for development value at current market prices would therefore expose public authorities to the necessity of paying high prices for sites where, in the light of the plan, those prospects were high, and owners to receiving low prices where the land was reserved, as sometimes it must be, for some comparatively unprofitable use. In addition, it would mean that public authorities would have to pay prices enhanced by public improvements carried out at public expense. For these reasons the Government have decided that the better course would be to base the compensation on the current existing use value plus the 1947 development value.

31. It may be suggested that to limit compensation in the way proposed will work unfairly in certain cases. Land which in 1947 had little development value, and therefore no claim or only a small claim on the fund, may at some future date acquire considerable development value. Values will, as explained, tend to follow the development plans, and land which acquires a high development value will normally be land on which development will be permitted; but there will be exceptions and it may be thought that to limit compensation in these cases will inflict hardship on owners who are refused permission to develop or whose land is bought compulsorily. It is important, however, to remember that all transactions in land since 1947 have taken place in the full knowledge that the 1947 development value was the most that anyone could hope to receive by way of compensation from the £300 million fund. Purchasers in future will be able to safeguard themselves by ensuring that permission to develop is forthcoming before they pay more than current existing use value or, where a claim on the fund passes with the land, current existing use value plus 1947 development value (or the unexpended balance of the claim).

The source of compensation

32. Compensation for loss of development value through planning restrictions will be paid from Central Government funds. In the case of compulsory purchase it is intended that as the acquiring authority will no longer have to pay development charge they should pay for loss of 1947 development value as well as for current existing use value. The acquiring authority will pay to the owner the admitted claim (or the unexpended balance of the admitted claim) on the fund. Where there is interference with existing use in the interests of planning,[6] compensation will remain the responsibility of local planning authorities.

Special cases

33. Special arrangements will be made for compensation for restrictions on and compulsory purchase of the land of local authorities, statutory undertakers and charities,[7] in respect of which no claim on the £300 million fund was admissible. The intention is to retain the "prevailing use value" basis for the categories of land to which it applies at present (*i.e.*, certain land of local authorities, of statutory undertakers and the National Coal Board, and certain land held on charitable trusts or for ecclesiastical or other charitable purposes). Special provision will also be made for adjustment of payments where two or more claims relating to different interests were admitted in respect of the same piece of land (*vide* paragraph 42); where payment has already been made under the war-damage scheme (Sections 59 and 56 of the Acts [8]) in respect of loss of development value; and in certain other categories of case, such as where dead-ripe land is concerned.

Payment of interest

34. As explained in paragraph 28, payment for loss of development value will be on the basis of the admitted claim. The Acts provide that interest should accrue on any sum due to be paid as from the Appointed Day (July 1, 1948). The underlying assumption was that the payments would be made within five years; and since payments are now to be deferred it is intended that interest should be allowed to accrue for a further, though limited, period. The duration of this further period is one of the several points to which further

[6] Under s. 26 of the Act of 1947.
[7] See ss. 82–85 of the Act of 1947.
[8] s. 59 of the English Act; s. 56 of the Scottish Act.

consideration will be given; but where development has already been prevented, or the land has been acquired by a public authority, the interest will certainly run until payment is made.

Exclusions from compensation for planning restrictions

35. Her Majesty's Government do not intend that compensation should be payable in every case in which permission to develop is refused or conditions are attached to a permission. They consider it reasonable to exclude compensation in respect of restrictions based on the principle of good neighbourliness, and there is precedent for doing so in the Planning Acts of 1932.[9] On this principle compensation will not in general be payable for refusal to allow a change in the use of a building, or refusal to allow a particular type of building, or for restrictions on the size of a building; nor for refusal to permit development which would place an undue burden on the community (*e.g.*, in the provision of services) or which would endanger public health or safety. These are only examples and the precise extent of the exclusions remains to be worked out. There will, of course, be no development charge to be paid when a change of use or any other form of development is permitted.

36. Provision will be made for a right of appeal in the case of any dispute as to the amount payable in any particular case within the overriding maximum of the claim.

Use of powers of compulsory acquisition

37. One result of the changes so far outlined is that there would be a free market in land, in the sense that anyone would be able to offer land for sale at whatever price he thinks appropriate without the fear that his action might result in compulsory acquisition. This should make it easier for developers to secure land and should thereby promote private development, which is an essential part of a balanced economy. There is, however, a danger that land-owners may try to stand out for too high a price for land which the local planning authority want to see developed, and which they have shown in their plan as suitable for early development. Whether this will happen in practice only time can show. But it might; and the Government have considered what measures may be necessary to prevent it. They do not intend that private developers should be held to ransom, nor that the proper course of development should be deflected.

[9] See the Town and Country Planning Act, 1932, s. 19.

38. Wide powers of compulsory acquisition already exist in the Planning Acts, not only to ensure that public authorities can acquire the land they need for public purposes, but also to enable them to make land available for private development in accordance with the provisions in their plan. Under the Housing Acts also local authorities can and do buy land for disposal to private builders, where these builders have difficulty in getting a site at an appropriate price. These powers did not exist at the beginning of the century when the problem of land values first began to exercise Governments. If experience shows them to be insufficient to prevent extortionate prices being demanded, the Government will not hesitate to strengthen them.

General

39. The Government believe that the need to make radical amendments now is established by the practical difficulties outlined in Part II. Their aim has been to meet those difficulties but to keep everything which is essential to effective planning, and to make 1947 development values the permanent basis for compensation. There is no perfect solution, but that proposed appears to the Government to be the best in all the circumstances.

40. One result of the new arrangements will be that payments will become due from central funds on the decisions of local authorities. A prospective developer who is refused permission for what he wants to do may appeal to the appropriate Minister; but he will be entitled to submit a claim for compensation instead of appealing if he chooses to do so. In dealing with applications for permission to develop, local planning authorities are required to have regard to the provisions of their development plans, and these plans have to be approved by the Ministers concerned. The broad proposals for land use are therefore settled in agreement with the Government. Nevertheless, local authorities have a good deal of discretion in their handling of individual applications, and the Government will look to them to exercise their discretion with due regard to public economy. How this can best be secured is a matter which the Government must discuss with the representatives of local planning authorities, and their proposals will be announced when the main amending measures are introduced.

Part IV.—Miscellaneous

Technical and transitional problems

41. The Government are aware that there are difficulties inherent in any attempt to use the claims for loss of development value made under the 1947 Acts as the basis of an *ad hoc* compensation scheme. These claims were intended to provide the information necessary for distributing the £300 million fund among owners who were adversely affected by the passing of the Acts; consequently they relate not to depreciation in the value of land but to depreciation in the value of interests in land existing in 1948. Where the interest was a fee simple in possession this makes no difference: but where there existed a freehold and one or more leasehold interests the result may be two or more claims in respect of the same piece of land. Moreover, the claims are transmissible by assignment or by operation of law as personal property, and may therefore be in separate ownership from the interest in land to which they relate. But under the Government's proposals, as indeed under any scheme for deferred payment of claims (*e.g.*, that put forward by the Royal Institution of Chartered Surveyors), the right to compensation must run with the land.

42. This change in the whole conception of the claims gives rise to a number of serious technical problems which will in some cases permit only of rough and ready solution. Some claims relate to large areas of land; as and when these are split into smaller units, it will be necessary to apportion the claim in order to provide each unit with its appropriate compensation quota. Again, where separate claims were made in respect of different interests, it will be difficult to use these directly as the basis for compensation because by the time compensation becomes payable the interests in the land may no longer be the same as they were in 1948, and even where they are their relative values will almost certainly have changed. The arrangements for making the necessary adjustments in these and other cases are being worked out.

43. A difficulty of a more general character arises from the need, under any scheme which provides for compensation to be paid as and when planning permission is refused, to prevent compensation being paid in cases where the owner applies for planning permission but has no present intention—perhaps even no desire—to develop his land. Sometimes the proposals will be merely premature—development would not naturally have taken place until later; sometimes, as where the land is

held for recreational purposes or to protect the amenities of adjoining property, it may be wholly fictitious. In some cases, particularly where the land is held to safeguard the amenities of a dwelling-house, there may be no objection to granting the permission which is ostensibly sought, in which case the difficulty vanishes. For the rest, provision will be made to ensure that no claim for compensation shall lie when planning permission is refused solely on the grounds that development would be premature. Her Majesty's Government are considering what further steps should be taken to ensure that payment is only made as and when real loss is sustained. It may be desirable to provide that in specified circumstances payment of compensation up to the full amount of the claim shall confer an option to acquire the land.

44. Provision will have to be made for registering against the land the maximum compensation payable and any payments made, and for securing that compensation already paid is recovered from the developer in the event of the planning decision being altered and development subsequently allowed. Payments made under Section 59 of the Act (Section 56 of the Scottish Act), where the value payment received under the War Damage Acts was depressed by the presence of development value in the site, will be recoverable in the same way if that development value has been or is in future realised.

45. Provision will also have to be made for effecting the transition from the old system to the new. In a number of cases the occasion for payment of compensation, as provided by the new system, has already arisen or will have arisen by the time the amending legislation is passed (see paragraph 57). Land has been or will be sold at existing use value in reliance on the claim on the fund, or the development of land to which a claim applies has been or will be prevented by the refusal or the revocation of planning permission. Machinery must be devised for picking up these cases as soon as possible, and for making the appropriate payments.

46. There are two clear principles. The first is that there can be no question of repaying development charge as such. When a tax is altered or rescinded no question of repayment arises, and although development charge is not strictly a tax the same principle applies here. The second principle is that it is to the holder of the claim that any payment that is due, having regard to the new proposals, should prima facie be made. It is the people who hold claims on the fund, and

whose loss will already have been sustained by the time the full amending legislation comes into operation, who are entitled to consideration in the transitional arrangements.

47. Certain cases are straightforward. As soon as the full amending legislation is passed, compensation must be paid for land which has been acquired by a public authority at existing use value. In these cases compensation will be paid up to the full value of the admitted claim plus accrued interest. This will call for adjustments between the Exchequer and the acquiring authorities where the land is developed without development charge having to be paid.

48. Compensation will also be paid where planning permission has been refused or revoked on the ground that the land ought to be restricted to its present use, except where the restriction is one which does not rank for compensation (see paragraph 35). In these cases, too, compensation will be paid up to the full value of the admitted claim plus accrued interest. But where it is only one particular form of development which has been forbidden, the compensation to be paid may, of course, be reduced or even eliminated altogether.

49. More difficult is the case where land has changed hands privately, with development in view, and the price at which it has changed hands has been affected by the 1947 Acts. Successive Governments have urged land-owners that they should sell land at existing use value, keeping their claim on the fund. Where an owner did this the claim ought to be paid as soon as the full amending legislation is passed, just as claims are to be paid where land has been bought at existing use value by a public authority. But in many cases the land was sold at something above the existing use value, the vendor still keeping the claim; and in that case the vendor has already received, from the purchaser, a part payment for the 1947 development value. The land may even have been sold at full unrestricted value, the vendor still keeping the claim; in that case he has already been paid for the whole of his 1947 value. Her Majesty's Government do not think that it would be right in these cases to pay the claim blindly to the holder; and they propose to pay him only so much of the claim as is needed to make up the price already received for the land to the amount of the 1947 unrestricted value.

50. This leaves to be considered the position of the developer who has paid development charge. Although the Government do not propose to repay development charge as such, they cannot ignore the fact that a person who paid

charge, and who holds an admitted claim, is entitled to expect some payment; when he paid the charge it was on the understanding that admitted claims would be met. It is proposed that the holders of claims who have paid development charge shall be paid up to the amount of the charge with the relevant interest; any balance being retained to provide compensation in the event of further restrictions giving rise to further claims for compensation. Then there are the developers who paid development charge but do not hold an admitted claim. On the thesis in the preceding paragraph, that the holders of admitted claims who have sold land at something above existing use value shall be paid only so much as is needed to make up the price they got for the land to the amount of the 1947 unrestricted value, it is right that the balance should be paid to the developer who paid development charge, notwithstanding that he does not hold the claim; for it is the price he paid for the land which has, in effect, reduced the amount which the Government will pay to the holder of the claim.

51. There will be cases where the land has been sold for development at something below the full unrestricted value, the vendor keeping the claim, but development has not yet taken place so that no development charge has been paid. If the Government is to pay the holder of the claim in these cases, the payment ought in logic to be recovered from the developer who bought at a price depressed by the operation of the Acts and is now to escape development charge. But it seems to the Government that it would be very difficult as a matter of administration to recover the money in these cases, owing to the time lag between the abolition of development charge and the enactment of the full amending measure. They do not, therefore, propose to attempt recovery on future development, except as provided in paragraph 44.

52. In a number of cases a claim on the fund has been assigned by the original holder to some person having no interest in the land. Such a claim will be met if it is one on which a payment is due to be made in accordance with the preceding paragraphs, but the amount of the payment made to the assignee will be limited to the consideration given for it. Any increase in the number of cases of severance of this kind will complicate the process of transition, and it is highly desirable that the claims and the relevant interest in land should as far as possible pass together in all future transactions. The Government therefore propose that the right of

assignment should generally be made subject to the approval of the Central Land Board.

53. Apportionment of the claim will be necessary under these arrangements wherever the land to which a claim applies is split up, or a planning decision applies to only part of the land to which a claim applies.

54. Claims which have already been accepted as security for development charge will *pro tanto* be reduced.

Cost

55. It is impossible to estimate with any accuracy the cost of the Government's proposals or to compare it with the cost of carrying out the existing Acts. On the one hand the proposals involve the loss of the revenue from development charge. This had, up to October 31, 1952, brought in £19¾ million, and revenue is accruing at the rate of about £8 million a year, a figure which would rise as the land which is free of charge becomes used up. Against this loss of revenue must be set the fact that under the proposals many of the claims on the £300 million will never have to be paid. In many cases permission will be given to realise the development value of the land and the claim will be extinguished: in others no payment will be made because the restrictions imposed do not rank for compensation. Where land is acquired by a local authority or statutory undertaker, payment of the claim will be the liability of the authority or undertaker, and not of the Exchequer.

56. The initial liability on the Exchequer will undoubtedly be heavy because it will include the cost of meeting all commitments incurred since July 1, 1948. Payments in respect of land bought by public authorities and land on which development charge has been paid may amount to about £25 to £30 million, some part of which will be recoverable from local authorities. But payments in respect of restrictions already imposed cannot be even tentatively estimated since it is not known what is the value of the claims on the land to which restrictions have been applied by local planning authorities, and even if it were, allowance would have to be made for the exclusions from compensation which have not yet been defined. Once these arrears have been overtaken, payments will be on a diminishing scale. No true comparison can in any event be made between the cost of the Government's proposals and that of the present system.

Legislative Programme

57. Owing to the Government's desire to allow plenty of time for discussion of their proposals and to the need for examination of the technical difficulties inherent in them, it will not be possible to introduce the main Bills embodying the new system of compensation before the autumn of 1953. Meanwhile, as already stated in paragraph 27, Her Majesty's Government are introducing immediately a Bill to abolish the liability to development charge in respect of future schemes of development. This interim Bill will also remove the obligation laid on the Treasury by the present Acts to distribute the £300 million fund. Thirdly, the Bill will make the approval of the Central Land Board necessary to assignments of claims on the £300 million fund after the date of introduction. The remainder of the changes proposed in this memorandum will, in general, only come into effect when the main Bills have been passed, and in the meantime the provisions of the 1947 Acts will continue to have effect.

58. Deferment of the main Bills until the next Session means that it will not be possible to start making payments until the autumn of 1954. The Government regret this, but they fear that it is inescapable. They have considered whether it would be possible to take power in the interim Bill to make payments at once in the most urgent cases, but they are satisfied that it would not be practicable to distinguish one class of case from another, or to start making payments at all, until the whole of their proposals have been enacted. The provision that claims on the fund which are due to be met under the new system will be paid in full and that interest will accrue for a further period, should go some way to assuage the disappointment of owners whose case for payment has already arisen; and every effort will be made to deal with the most urgent cases as soon as the main Bills are passed.

Examples of Compensation Payments

For the sake of simplicity, the following examples of how the proposals set out in the White Paper would work are all based on a plot of freehold land the unrestricted value of which, as at January 7, 1947, was £100. A claim on the £300 millions for loss of development value has been made to the Central Land Board and admitted at £60. The current existing use value of the land is (having regard to the fall in value of money since 1947) £45.

References hereunder are to the paragraphs of the White Paper, *ante*, pp. 651 *et seq.*

1. *Land compulsorily acquired*

Q. The land was compulsorily acquired, before the new Scheme came into operation, at its current existing use value of £45. What compensation is payable and to whom?

A. The person from whom the land was acquired, provided he still holds the admitted claim of £60, is entitled to that amount with accrued interest (para. 47). Where some part of the claim had been already used to compensate for a partial restriction of development the amount payable would be correspondingly reduced (para. 28). Additional compensation will be paid for abortive expenditure incurred in good faith on the strength of a planning permission which could not be used because of a subsequent compulsory acquisition (para. 28 and see Q. and A. 2).

Note.—(a) In this and subsequent cases payment is made with accrued interest from July 1, 1948 (para. 34). Payment will not be made before the autumn of 1954 when the main Act foreshadowed in clause 2 of the Town and Country Planning Bill is expected to pass (paras. 57, 58). (b) After the new scheme of payments has come into operation the price of compulsory acquisition will be current existing use value plus the amount of any admitted claim standing against the property (para. 30).

2. *Refusal of planning permission* (1)

Q. The owner of the land has been refused planning permission for the erection of a bungalow, the grounds of refusal being that it would be incongruous having

regard to the distinctive architectural character of the street. Is he entitled to compensation?

A. No; on the principle of good neighbourliness. See the other examples given in para. 35; see also para. 43. This example would probably also fail under para. 48, since the refusal would only prevent the erection of the particular type of building and not be a general refusal of permission to build.

3. *Refusal of planning permission* (2)

Q. The owner of the land has been refused planning permission for the erection of a house, the grounds of refusal being that the land is too valuable agriculturally and is within the Green Belt. What compensation is he entitled to?

A. The amount of his admitted claim of £60 and accrued interest (para. 48). Where some part of the admitted claim had already been used to compensate for a partial restriction of development the amount payable on complete restriction would be correspondingly reduced (para. 28). The claim would be paid in 1954 or following the refusal, whichever is the later.

Note.—Where there is interference with an existing use (under s. 26 of the Act of 1947), compensation will remain the responsibility of the local planning authority (para. 32).

4. *Land sold privately for development before November* 18, 1952 (1)

Q. The land has been sold to a private purchaser for development at the price of £70 and the vendor has retained the admitted claim of £60. Is the vendor entitled to any and if so what compensation?

A. He will be entitled to so much of his admitted claim (£60) as is required to make up the sale price (£70) to the amount of the unrestricted value as at January 7, 1947 (£100), *i.e.*, £100 − £70 = £30 plus accrued interest (para. 49).

Note.—For the compensation payable to the purchaser see Q. and A. 9 below.

5. *Land sold privately for development before November* 18, 1952 (2)

Q. The land has been sold to a private purchaser for development at the current existing use value of £45 and the vendor has retained the admitted claim of £60. What compensation is the vendor entitled to?

Would any further payment be required of the purchaser?

A. £55 (arrived at as in Q. & A. 4) and accrued interest (para. 49). The vendor would in fact lose the improvement in existing use value at the date of sale over the restricted value at January 7, 1947. See also Q. & A. 9 below. If the sale had been at a current existing use value of, say, £35 (or any figure not exceeding £40) the vendor would receive the admitted claim in full. A purchaser who has acquired land at less than its unrestricted value and is now relieved of development charge will be left with the benefit of his bargain (para. 51).

6. *Land sold privately for development before November* 18, 1952 (3)

Q. The land has been sold to a private purchaser for development at the price of £100 and the vendor has retained the admitted claim of £60. Is the vendor entitled to any compensation?

A. No (para. 49).

Note.—The purchaser will be entitled to claim compensation of £60 : *cf.* Q. and A. 9 below.

7. *Development charge paid* (1)

Q. The owner of the land has paid a development charge of £75 and has begun the development. Is he entitled to a repayment of development charge or to payment of compensation?

A. He is not entitled to repayment of the £75 paid as development charge but he is entitled to payment of the amount of his admitted claim of £60 plus accrued interest (para. 50). Claims which have already been accepted as security for development charge will *pro tanto* be reduced (para. 54).

Note.—If the development had not been begun on November 18, 1952 (and is not included in a determination of development charge or on application which includes another development which has been begun), the development charge is repayable: see clause 1 of the Bill, *post*, p. 676. As to when development can be said to have been begun see, *e.g.*, [1952] J.P.L. 286, 526, and *post*, p. 685.

8. *Development charge paid* (2)

Q. The owner of the land has paid a development charge of £40 in respect of a partial development of the land

and has begun the development. What compensation is he entitled to?

A. His admitted claim (of £60) up to the amount of the development charge paid, *i.e.*, £40 plus accrued interest (para. 50). The balance of the admitted claim remains available to meet a further claim or become payable in the event of compulsory acquisition.

9. *Development charge paid* (3)

Q. The land was sold for development before November 18, 1952, for £70, the vendor retaining the admitted claim of £60. The purchaser paid a development charge of £75 and carried out the development. What claim has the purchaser for compensation?

A. The compensation to the purchaser is arrived at as follows: the vendor is entitled (on the new Scheme for payments coming into force) to so much of the admitted claim (£60) as is required to bring the sale price (£70) up to the 1947 unrestricted value (£100), that is to say the vendor will be entitled to £30 out of the admitted claim of £60 (see Q. & A. 4 above). The balance is payable to the purchaser, who therefore receives £30 plus accrued interest (para. 50).

Note.—If the sale price had been £100 the purchaser would be entitled to the whole £60 plus accrued interest.

10. *Claim assigned apart from the land*

Q. The admitted claim of £60 was sold, apart from the land, for £10. What compensation will the purchaser of the claim be entitled to?

A. The purchaser will not be entitled to more than the consideration he paid (£10) plus accrued interest. His right to compensation will not arise except in circumstances in which the payment of the claim would have become due had there been no such assignment (para. 52).

Progress of Development Plans

(*Continued from p.* 621, *ante*)

Plans Submitted to the Minister

The following is a continuation of the list of plans submitted to date (November 21, 1952). Any objections should be sent to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before the closing date indicated.

115. Anglesey County Council.
Submitted to Minister: September 29, 1952.
Closing date for objections: November 29, 1952.

116. Plymouth County Borough Council.
Submitted to Minister: September 29, 1952.
(*London Gazette*, October 28, 1952.)
Closing date for objections: December 8, 1952.

117. Bedfordshire County Council.
Submitted to Minister: September 30, 1952.
Closing date for objections: November 30, 1952.

119. Bournemouth County Borough Council.
Submitted to Minister: October 28, 1952.
(*London Gazette*, October 31, 1952.)
Closing date for objections: January 31, 1953.

Dates of Local Inquiries

92. Hampshire County Council.
Local inquiry: December 9, 1952.

100. Cumberland County Council.
Local inquiry: December 9, 1952.

Plans Approved by the Minister

The development plans of the following local authorities have now been approved by the Minister and have become

[*Continued on p.* 699

Parliamentary Intelligence

Town and Country Planning Bill, 1952

This Bill, to effect radical alterations to the financial provisions of the Act of 1947, was introduced into Parliament on November 18, 1952. The provisions and effect of it are referred to in the Government White Paper, published in full at p. 651, *ante*, and the Explanatory and Financial Memorandum is printed below.

Explanatory and Financial Memorandum

This Bill alters the financial provisions of the Town and Country Planning Act, 1947 (and the Town and Country Planning (Scotland) Act, 1947) so that developers are relieved of the liability to pay development charges and no distribution is made from the £300 million fund established under the first-named Act.

Clause 1 abolishes development charge for development commenced on or after November 18, 1952. The whole of any development commenced before that date remains liable to development charge but where the charge has already been paid and development has not in fact commenced the amount of the charge will be repaid out of moneys provided by Parliament. The expenditure involved cannot be estimated with accuracy but is expected to be small.

Clause 2 repeals the provisions of the Acts of 1947 relating to the distribution of the £300 million fund in respect of depreciation of land values, and leaves over for a subsequent Act all questions as to the extent to which claims on the fund are to be satisfied. The assignment (or, in Scotland, assignation) of claims on or after November 18, 1952, subject to certain exceptions, is to require the approval of the Central Land Board.

Clause 3 is designed to avoid certain anomalies which would otherwise arise in the period before further legislation for the amendment of the financial provisions of the Acts can be enacted. The clause provides that Clauses 1 and 2 of the Bill shall not affect the compensation payable in certain cases when a planning permission is modified or revoked or land is

compulsorily acquired and shall not affect the working of the Mineral Development Charge (Set-Off) Scheme. It preserves the powers of the Central Land Board to buy land which they have contracted to buy or are in process of acquiring under a compulsory purchase order. It suspends certain provisions relating to the compensation payable in respect of a grant of mineral working rights and relating to the modification of mining leases; these provisions are rendered inappropriate by the abolition of development charge.

Agricultural Land (Removal of Surface Soil) Bill

This Private Member's Bill, which was introduced in the last Session of Parliament, failed to become an Act before the end of the Session, and has now lapsed.

Replies to Questions in the House of Commons

Development Charge Payments

In a written reply to Major Hicks Beach, Mr. Boyd-Carpenter said that the total amount which has been paid to the Treasury in respect of development charges under the Act of 1947, up to October 17, 1952, was £12,258,000 paid in cash and a further £7,235,000 set off against claims on the £300 million. (October 24, 1952. H.C. Debates, Vol. 505, col. *152.*)

Notes of Cases [1]

Queen's Bench Division: Divisional Court

Enforcement Notice—Right to Question Validity on Summons for Contravention [2]

Mead v. Chelmsford Rural District Council [3] (October 15, 1952). This was an appeal by way of case stated from Essex Quarter Sessions.

The appellant had been required by the terms of an enforcement notice under s. 23 of the Act of 1947 to remove certain materials from land occupied by him, and to discontinue the use of the land as a site for the deposit of waste, scrap and other materials in connection with his business as a general dealer, "within 56 days after the service of this notice." A footnote to the expression "56 days" said "Not less than 28 days."

The appellant had not appealed against the notice, and he was subsequently convicted by the court of summary jurisdiction at Chelmsford for having used the land in contravention of the notice. On appeal, the Essex Court of Quarter Sessions held that they were bound by the decision in *Perrins* v. *Perrins* [1951] 2 K.B. 414; 1 P. & C.R. 457,[4] and had no jurisdiction to question the validity of the notice; and they dismissed the appeal.

The Divisional Court (Lord Goddard C.J., Finnemore and McNair JJ.) held that the enforcement notice did not specify both the date on which it was to take effect (not less than 28 days from service of the notice) and also the period within which there was to be compliance with the requirements of the notice. The notice was therefore invalid (as in *Burgess* v. *Jarvis* [1952] 2 Q.B. 41; 2 P. & C.R. 377 [5]).

It had been decided in *Perrins* v. *Perrins* that a person summoned for disobeying an enforcement notice could not

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[1] Full reports of these cases will be published in *Planning and Compensation Reports*.

[2] A note on the effect of this case appears at p. 648, *ante*.

[3] Counsel: *Percy Lamb*, *Q.C.*, and *L. Jellinek*, for the appellant; *F. W. Beney*, *Q.C.*, and *V. G. Hines*, for the respondent.

[4] [1951] J.P.L. 354.

[5] *Ante*, p. 230.

challenge the validity of the notice on grounds which could have been taken by way of appeal under s. 23 (4) of the Act of 1947, *viz.*, on any of the grounds specified in paras. (*a*) and (*b*) of s. 23 (4). There was, however, no provision for an appeal under s. 23 (4) in respect of a notice which was invalid, as in the present case, and the appellant was therefore not precluded from relying on the invalidity of the enforcement notice by way of defence to a prosecution under s. 24 (3) of the Act.

Appeal allowed

Validity of Enforcement Notice—Notice Not Separately Specifying Period after which to Take Effect

London County Council v. Cole [6] (October 24, 1952). This was an appeal by case stated against the decision of South London Sessions (noted *ante*, pp. 231–32). A metropolitan magistrate had imposed a fine under s. 24 (3) of the Act of 1947 for contravention of an enforcement notice, and this decision was upheld by South London Sessions, notwithstanding that the notice did not separately specify any period after which it was to take effect.

In view of the decision in *Mead* v. *Chelmsford Rural District Council* (noted, *supra*), the respondent county council did not contest the appeal in this case, and the court (Lord Goddard C.J., Finnemore and McNair JJ.) remitted the case to South London Sessions with a direction to allow the appeal.

Appeal allowed, with costs.

Display of Advertisements—Scheme under Act of 1932 *Preserved by Act of* 1947

Dominant Sites, Ltd. v. Hendon Corporation [7] (November 7, 1952). This was an appeal to the Divisional Court from a decision of Middlesex Quarter Sessions, who had confirmed the dismissal by Hendon magistrates of two appeals requiring the discontinuance of the use for the display of advertisements of certain land at Mill Hill, and the removal of two advertisement hoardings.

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[6] Counsel: *J. P. Widgery*, instructed by Stafford Clark & Co., for the appellant; *Geoffrey Lawrence, Q.C.*, and *Wm. Scrivens*, instructed by the Solicitor to the London County Council.

[7] Counsel: *A. M. Lyons, Q.C.*, and *H. B. Magnus*, instructed by Hall, Brydon, Egerton & Nicholas, for the appellants; *J. T. Molony*, instructed by the Town Clerk of Hendon.

A town planning scheme made under the Town and Country Planning Act, 1932, was continued in force by the Act of 1947 (Sched. X, para. 7) in relation to the control of advertisements, and had not been determined by the Minister. It was contended by the appellants that under the scheme they had a right to erect hoardings on the land, without consent but subject to challenge by the local authority which would give rise to a right of appeal to the courts. They contended that these rights were not affected by the Town and Country Planning (Control of Advertisements) Regulations, 1948, which provided for an appeal to a Government Department.

The Divisional Court (LORD GODDARD C.J., and MCNAIR, J.; FINNEMORE J. dissenting) held that the Regulations of 1948, made under the Act of 1947, were effective in relation to the advertisements in question, and the express power conferred on the local planning authority to make regulations to apply to advertisements being displayed on the date when the regulations came into force did not allow for any implied exemption in respect of advertisements covered by an existing town planning scheme.

Appeal dismissed, with costs.

LEEDS QUARTER SESSIONS

Validity of Enforcement Notice—Notice Not Specifying Period after which to Take Effect—Jurisdiction of Justices

Wilkinson's Executors v. Leeds Corporation [8] (October 1, 1952). The respondent authority had served on the appellants, within the period of three years from July 1, 1952, specified in s. 75 (1) of the Act of 1947, an enforcement notice alleging that certain premises at Leeds were being used for commercial purposes in contravention of previous planning control, and requiring that use to be discontinued.

The appellants appealed to a court of summary jurisdiction and alleged that the notice did not specify a period at the expiration of which it was to take effect, and was therefore invalid. The stipendiary magistrate dismissed the appeal, and the appellants appealed to quarter sessions.

The Court (G. RAYMOND HINCHCLIFFE, ESQ., Q.C.) said that having regard to *Burgess* v. *Jarvis and Sevenoaks Rural*

[8] Counsel: *R. E. Megarry* and *R. M. Clough*, instructed by Booth, Wade, Lomas-Walker & Co., for the appellants; *Stanley Price*, instructed by the Town Clerk of Leeds.

District Council ([1952] 2 Q.B. 41; 2 P. & C.R. 377) [9] it was clear that the enforcement notice was invalid if it did not specify two periods, one of which was the period after which the notice shall take effect. In this case, however, the final paragraph of the notice read: "And further take notice that under subsection (4) of section 23 of the said Act of 1947, if you are aggrieved by the terms of this notice you may appeal against the notice within a period of 28 days from the service of the notice upon you to the court of summary jurisdiction for the City of Leeds," and in the circumstances the notice complied with the requirements of the section and was valid.

It was therefore not necessary to reach any firm conclusion on a further point raised by counsel for the respondents, *viz.*, as to whether the court and the court of summary jurisdiction had jurisdiction to determine a question of law arising on an enforcement notice appeal under the Act of 1947.

Court of Summary Jurisdiction

Jurisdiction of Magistrates where Enforcement Notice Invalid

Remnant v. Harrow U. D. C. [10] (November 17, 1952). This was an appeal to the court of summary jurisdiction at Hendon, Middlesex, against an enforcement notice served by the respondent council on the appellant as occupier of certain land at Edgware. The notice recited that the present use of the land was "as a site for caravans used, or intended to be used, as residential accommodation," that in September, 1949, the land "was developed by the placing thereon of a caravan which was then occupied by Mr. G. M. T. Takell and which since that date has continued to be so occupied and thereafter by the placing thereon at intervals of a further eleven caravans, all of which caravans are used, or intended to be used, as residential accommodation," and that such development had been carried out without planning permission under the Act of 1947. The notice then stated that the Council "hereby give you notice to remove from the land all the caravans which are situated thereon, with the exception of that occupied by Mrs. K. Miles,

[9] Noted *ante*, p. 230.
[10] Counsel: *Wm. Scrivens*, instructed by Titmuss, Sainer & Webb, for the appellant.

and, with the exception of the caravan last mentioned, cease to use the land or to permit the land to be used as a site for caravans used or intended to be used for residential accommodation within 28 days from the date upon which this notice takes effect." A period after which the notice was to take effect was then specified.

Counsel for the appellant submitted that the notice did not specify any "development" within the meaning of the Act of 1947, and that therefore, having regard to s. 23 (2) of the Act, it was not an enforcement notice, and that it followed that the court had no jurisdiction under s. 23 (4).

The court held, on a preliminary issue as to jurisdiction, that the notice was bad on its face and that therefore they had no jurisdiction.[11]

Lands Tribunal Decisions[1]

Compensation for Compulsory Purchase

Hillman v. London County Council[2] (Ref. 44/1951. October 15, 1952). This was a claim for compensation for the compulsory purchase of property at Marylebone Road, St. Marylebone, London, known as Marylebone Baths, and comprising large bath halls with cubicles, slipper baths, boiler rooms, laundry, an administrative block and caretaker's flat.

The public baths had become redundant in 1936 and the Marylebone Borough Council, then the owners, had considered selling them, but the sale had been deferred pending road widening proposals and later by reason of the war. In December, 1947, tenders for the property had been invited and the highest tender was that of Mr. Hillman, the present

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[11] See the article by Harold J. J. Brown at [1951] J.P.L. 645, where it was argued that where on an appeal to the court of summary jurisdiction under s. 23 (4) it is shown that the purported "enforcement notice" is invalid, and so not in fact an enforcement notice at all, the correct course was for the court to decline jurisdiction. This is the first reported case in which this course has been followed.

[1] Full reports of these cases will be published in *Planning and Compensation Reports*.

[2] *Michael Rowe, Q.C.*, and *G. D. Squibb*, instructed by Messrs. Franks, Charlesly & Leighton, for the claimant; *Geoffrey Lawrence, Q.C.*, and *J. Ramsay Willis*, instructed by the Solicitor to the London County Council.

claimant, and was for £40,250, subject to liberty to use the premises in accordance with the town planning scheme, under which the tentative zoning was "intermediate" and "local business." This tender was accepted and the date for completion was fixed for June 24, 1948. Numerous applications for planning permission ensued during the next three years, but all except the last were refused or limited to 14 years on account of the road development proposals and, as a result, the claimant had difficulty in raising the money to enable him to complete the purchase.

In June, 1949, the Minister issued a s. 80 certificate which would afford exemption from development charge for the development referred to in the certificate if planning permission were received before completion of the purchase. In January, 1950, the London County Council made a tentative offer of £35,000 for the site. In April or May, 1950, the road proposals, which had until then prejudiced the planning applications, were abandoned, but on May 19, 1950, the Marylebone Borough Council gave the claimant 21 days' notice —to June 9, 1950—to complete the purchase. His last application for planning permission, submitted on May 17, 1950, was expedited by the London County Council, and planning permission for a block of offices was received on June 7, 1950, and the claimant was then able to raise the necessary money and complete the purchase. The London County Council served notice to treat on the claimant in June, 1951, following unsuccessful attempts to acquire the property from him by agreement. The claimant submitted valuations by the residual method in support of a claim for £533,901. Valuations submitted for the acquiring authority, by the comparative method, totalled £61,650 and £60,774.

The Tribunal (J. P. C. Done, Esq., F.R.I.C.S.) held that no regard could be paid to the assumption in the claimant's valuation that the valuation should relate to July, 1950, from which date the claimant's capital had been frozen in an unproductive investment owing to the threat of acquisition.

Examining the claimant's valuation, based on development by the erection of a block of offices, the Tribunal accepted a figure of 11s. 4d. per foot super for the building to be erected on the site, and then referred to figures in the claimant's valuation of £956,540 for that building and £248,466 for the cost of constructing it, resulting in a profit of £708,073. The Tribunal criticised the fact that this figure for profit was apportioned by the claimant as to 10 per cent. to the adventurer carrying

out the development and 90 per cent. to the site owner. In another case which had been referred to, the proportion of gross profit retained by the site owner did not exceed 25 per cent., although the conditions for development were more favourable in that case. The Tribunal concluded that it was not possible directly to calculate site value from potential development profit. The claimant's valuation was a proper step in the process of valuation but could not be accepted as the valuation itself.

It was necessary to compare the potentialities of the claimant's site with other sites where the value had been established in market transactions, as in three properties referred to by the acquiring authority, from which figures of £3 5s. 0d. and £3 per foot super for the main site, and half those values for the forecourt, had been taken for the authority's valuations. After considering the other properties the Tribunal concluded that £4 per foot super should be taken for the main site and £2 per foot super for the forecourt in this case. It was accepted that it would be five years before a building licence was available. The appropriate valuation table for deferment was considered to be 5 per cent., and for capitalisation of the interim rent, 8 per cent., and on this basis the compensation was assessed at £81,000.

Hitchin v. Benfleet U. D. C. (Ref. 2/1951. October 13, 1952). This was a claim for compensation for the compulsory purchase of three plots of building land, 0·215 acre in area, at South Benfleet, Essex. The land had not been used for agricultural purposes for several years and was covered with rough scrub. Notice to treat was dated September 30, 1948.

The Tribunal (J. P. C. Done, Esq., F.R.I.C.S.) accepted that the acquiring authority's valuation of £25, as the existing use value of the land, was a generous one, and assessed the compensation at that amount.

Correspondence

To the Managing Editor,

Journal of Planning Law.

Sir,

"Substantial commencement of work"

You may be interested in a decision of the Minister on appeal which in effect is an interpretation of what he regards as "substantial commencement of work."

Briefly, the facts are as follows:—

In 1948 my Council granted interim development permission for the erection of four shops with three flats over upon the condition that the proposed development was then "substantially commenced within a reasonable period, namely, three years" from the date of the permission.

In 1951, the application for planning permission was renewed, but on that occasion permission was not given because of a direction by the Minister of Transport pursuant to article 7 (2) of the General Development Order, 1950. On appeal, evidence was given to the effect that during the three year period following the interim development permission some £70 was spent on digging foundations. At the close of the inquiry, the Minister's Inspector visited the site and examined the digging which it was stated had cost £70.

The Minister has now issued his decision some three and a half months after the date of the inquiry, and the following is the operative paragraph:—

> "On the basis of this evidence, the Minister is of the opinion that the development for which permission was granted on January 8, 1948, has been commenced and having regard to the provisions of section 77 of the Town and Country Planning Act, 1947, he accordingly finds that no further permission in respect of it is required under the Act."

Yours faithfully,

C. N. Booth,

Clerk of the Brentwood Urban District Council.

Brentwood.

Notes of Planning Decisions *

Erection of dwelling-house and surgery on remote site

The following is an extract from the letter of the Minister of Housing and Local Government, dated October 7, 1952, allowing an appeal against the refusal of the Cambridgeshire County Council to permit the erection of a dwelling-house with surgery and a garage on land at Church Lane, Knapwell.

"Church Lane leads off the High Street by means of double gates and a lych gate. For about 130 yards it is a green track, some 50 feet in width and with a single row of trees down the middle, extending as far as the church boundary where it narrows and for about 80 yards has widths diminishing from 20 to 12 feet. The last 50 yards lie within the curtilage of the appeal land and on the latter is sited an old thatched and dilapidated cottage in which the appellant and his wife live.

"At the inquiry the appellant stated that he wished to build on the appeal land a house with surgery, and a separate garage. He intended to retain his surgery at Papworth, about five miles away, but he had no wish to live in that village. On behalf of your Council it was contended that the access was inadequate; that patients visiting the surgery must have adequate access, and that a surgery would lead to an increase in traffic. The nearest water supply was some distance away and it was unlikely that the necessary extension would benefit any other house. It had been suggested that the appellant should find an alternative site possibly on an existing highway. The Council disclaimed all liability for road repairs in Church Lane, the owner-status of which is in considerable doubt.

"The Minister notes that the appellant expressed his willingness to improve the track leading to his property and, whatever the exact status of Church Lane may be, he considers it reasonable to assume that as there is already a house on the site the appellant will be able to make some provision for vehicular access to it and also that there is no practical

* The Managing Editor desires to express his thanks to those who have been kind enough to send to this Journal particulars of planning decisions, and hopes that he will continue to receive particulars of planning decisions which involve points of general interest.

prospect of any liability falling on the Council in respect of this provision. Quite apart from this question of access a special case would need to be established for building a house on a virgin site at this distance from all services and from any other house. The present proposal however, is not to build on a virgin site, but to substitute for an existing inadequate house, an adequate one which incidentally will better serve a public need by providing a surgery. In these special circumstances the Minister has come to the conclusion that the proposal should not be rejected simply on account of the remoteness of the site and he has accordingly decided to allow the appeal."

[By courtesy of the County Planning Officer, County of Cambridge.]

Erection of bungalow—restriction to particular curtilage

The following is an extract from the letter of the Minister of Housing and Local Government, dated September 29, 1952, allowing an appeal against the conditions imposed by the Cambridgeshire County Council for the erection of a bungalow on land in Barton Road, Comberton.

" On June 24, 1947, planning permission was given for the erection of a bungalow on land having a frontage of 560 feet to Barton Boad. The accompanying plan showed the bungalow to be sited almost centrally on the plot of land, but it was eventually erected near the western boundary. On April 7, 1952, permission was sought for the actual western siting with a modified frontage to Barton Road of only 150 feet. Permission was granted for the siting subject to the condition that the bungalow should remain within the original curtilage.

" It was contended on behalf of your client that the condition imposed was unreasonable, and that the use of part of the land for market gardens and part for light industry could not be regarded as within the curtilage of a dwelling-house. On behalf of the Council it was stated that permission was originally granted by Chesterton Rural District Council because the dwelling was required for a smallholding and that the temporary permission given in January, 1952, for the erection of a workshop to manufacture glazing clips for greenhouses was for the purpose of agriculture. It was also contended that if the land were severed there would be no case to put to the Council for permission to erect a further dwelling on the site.

"The Minister considers that since there is nothing to prevent the owner disposing of the land and that since the use in connection with the building is not a planning matter except in so far as it may arise on an application to use the land for some other purpose the question of such use must be left until such application is made. He is of the opinion that planning consent for the erection of a dwelling-house should not be contingent upon a specified use of the land in the vicinity, and he does not, therefore, regard the condition attached to the planning permission as a proper one.

"Whilst, generally, very strong reasons are required to take land out of agricultural use, the Minister sees no reason why in the absence of agricultural objection the claims of people who really desire to live on their own away from other people should not be recognised, so long as services are available and provided that no injury to amenities is involved from either siting or poor architectural treatment. This case is one in point. It would appear that the Council have no objection on amenity grounds to the alteration of the site of the building as now chosen. The Minister has, therefore, decided to discharge the conditions and to permit the retention of the bungalow in the position now sited."

[By courtesy of the County Planning Officer, County of Cambridge.]

Residential Castle—Use as Nunnery

The following is an extract from the letter of the Minister of Housing and Local Government dated October 9, 1952, following an appeal against the determination, under s. 17 of the Act of 1947, by Maidstone Borough Council that the use of Allington Castle, Maidstone, as a residence for nuns would constitute a material change of use and that accordingly an application for planning permission would be required therefor.

"There was no dispute that the last known use of the premises was as a private dwelling.

"The Minister considers that there is a clear distinction between a building used for communal living and one used by a family in the generally accepted sense of the word. He has no doubt, therefore, that the use of the premises as a residence for nuns would be a material change from its use as a private dwelling. Accordingly he dismisses your clients' appeal."

[By courtesy of the Town Clerk of Maidstone.]

Use for Storage Purposes of Living Accommodation occupied with Shops

The following is an extract from the letter of the Minister of Housing and Local Government dated September 30, 1952, dismissing an appeal against the refusal of the Coventry City Council to consent to the use for storage purposes of living accommodation at 82 Baginton Road, Coventry. The appeal premises are one of a group of six shops with living accommodation, forming part of the Stivichall Hall Estate and built as one unit in 1949. Each building was designed with a living room, kitchen and offices behind the shop and with three bedrooms and a bathroom on the first floor. The neighbourhood is residential and the main shopping centre of the estate is about a mile to the north-east.

"You stated that your clients purchased the shop in 1950 and had let the flat over it to a tenant who had recently moved out. The business has considerably expanded and as there are no facilities for storage of goods in the shop they want to use the flat for this purpose. They have previously had to store goods in their private houses. They said that an ironmonger's stock-in-trade included many articles which occupied considerable space. They also undertook repairs which they were carrying out in the kitchen but they hoped later to build a garage where this work could be done. They had also found it necessary to use the back garden for storing builders' materials. They claimed that they serve a large and increasing residential area and, as the nearest ironmongers were a mile distant, they have to maintain a varied and large stock which would have to be cut down if the appeal is not allowed. They admitted that the shop was not suitable for expansion and they were aware of the shortage of housing accommodation in Coventry but they contended that the need of a well-stocked ironmonger's shop was greater than housing requirements.

"The Council's case was that the building was one of a group designed as small local shops, with living accommodation as an integral feature of the design and with gardens at the rear for the enjoyment of the inhabitants of the flats. The shops were intended to meet only the day-to-day needs of the local residents and the appellants had built up a type of business that was unsuitable and should be located in a larger shopping centre. The Council contended that the use of the upper floor for storage purposes would have an adverse

effect on the amenities of a residential area and particularly on the adjoining properties. Moreover, they had more than 10,000 applicants on their housing list and it was quite wrong in those circumstances to allow a modern housing unit to be diverted to storage.

"The Minister has considered the facts of the case and representations of the parties. He agrees with the Council that the use of this living accommodation for storage is quite wrong. He accordingly dismisses the appeal."

[By courtesy of the Town Clerk, City of Coventry.]

Use of Agricultural Land for School Playing Fields

The following is an extract from the letter of the Minister of Housing and Local Government dated October 25, 1952, dismissing an appeal against the refusal of the Hampshire County Council to consent to the use as school playing fields of land at Havant, Hampshire.

"The Minister appreciates that the existing playing field for St. Johns College is inadequate to meet present-day requirements and the proposed expansion of the college, but this must be weighed up against the pressing requirement for continued agricultural use. The proposal, albeit for only 20 acres, would mean, of course, that some 80 acres in all (field O.S. 773) would go out of production, and the Minister is unable to accept this loss of agricultural land at the present time.

"He has therefore decided to dismiss your clients' appeal."

[By courtesy of the Clerk to the Havant and Waterloo Area Development Sub-Committee.]

Display of Advertisements

The Minister of Housing and Local Government has dismissed an appeal against the refusal of Bromley Borough Council to permit the continued display of numerous advertisements at the junction of Simpson's and Westmoreland Roads, Bromley.

The Minister observes that the panels are displayed in an unco-ordinated manner on the front and side of a building and against a low wall projecting from the angle of the building. He also notes that, despite the presence of a few shops, the locality is mainly residential in character, and includes a war-damaged church, which is being restored.

The Minister thinks the large number of advertisements not only detract from the appearance of the shop but are out of keeping with the general characteristics of the locality.

[By courtesy of the Public Relations Officer, Kent County Council.]

Display of Advertisement Board

The Minister of Housing and Local Government has dismissed an appeal against the refusal of the Kent County Council to permit the display of an advertisement board beside a police box at Cray Gardens, Crayford.

The Minister notes that the board would be displayed at the boundary of public gardens beside a road junction. He considers that the gardens form a pleasant open space in a commercial but modern, well-ordered locality.

He thinks the proposed advertisement in addition to an existing notice-board would create an excessive amount of advertising at this spot and would, to some extent, screen the view of the public gardens from the main road.

[By courtesy of the Public Relations Officer, Kent County Council.]

Practical Points

All questions for consideration should be addressed to "The Managing Editor, The Journal of Planning Law, 3 Chancery Lane, London, W.C.2." The questions of subscribers only are answerable in the Journal. All questions should be submitted in duplicate. The Publishers cannot accept any responsibility for the correctness of the replies.

395. *Change of use—use of sports arena for greyhound racing*

Since July, 1948, permission has been granted for the construction and layout of an enclosed arena, the main use of which was clearly indicated on the planning application as being a football ground. Permission was granted for the use of the land as a sports arena and it was understood by all parties that, if necessary, a charge could be made to the public on entry to the various meetings. The senior football club who used the ground have ceased to function in the district and the property has been advertised for sale. An inquiry has been received as to whether planning permission would be forthcoming for the use of the arena as a greyhound racing track with the necessary stands and other buildings.

I should like your guidance as to whether a material change of use is involved. [R. M. N.]

ANSWER

I agree that the phrase "sports arena" is wide but I am inclined to the view that there is a material change of use. There are special considerations to be taken into account including the commercial use of part of the area for betting. In Bulletin of Selected Appeals Decisions No. VII/23 the Minister held that the use of a greyhound racing stadium for motor-cycle speedway racing was development, having regard to the noise and effect on amenities. I suppose apart from change of use structural alterations will be necessary which are themselves development. [R. P. C.]

396. *Claim for loss of development value—liability to income tax*

We have read with interest your answer to practical point No. 389 in the October issue of the Journal (*ante*, p. 587). We were particularly interested by your last paragraph, namely, that there was a special arrangement regarding compensation received by builders with the Inland Revenue, but that the date for election under such arrangement had now expired.

Although the date it seems expired, we shall nevertheless be obliged if you will please let us know what this arrangement was, as we have not been able to find other reference to it in the previous issues of the Journal. [B. & H.]

ANSWER

The agreement referred to was made between the Board of Inland Revenue and the National Federation of Builders. The ordinary arrangement is that land which is sold as stock in trade may be valued in the accounts at either cost or market value whichever is the lower. If market value is adopted, then immediate relief is obtained for any loss in value due under s. 61 of the Town and Country Planning Act, 1947. The compensation should be treated as a trading receipt of the year when payable. The alternative method agreed with the Federation is that if he desires a builder may value the land at the cost or market value adopted immediately prior to July 1, 1948, until the compensation comes into credit. The builder must apply this election to all the land affected by development values. [H. G. S.]

397. *Crown Land*

I should be glad if you could advise me if there has been any decision or ruling by the Minister whether or not land belonging to a Territorial Army and Air Force Organisation comes within the definition of " Crown land " under s. 87 (1) of the Town and Country Planning Act, 1947. [R. F. G. T.]

ANSWER

We have ascertained from the Ministry of Housing and Local Government that they cannot trace any ruling with reference to s. 87 (1) of the Town and Country Planning Act, 1947, but that as regards land belonging to a Territorial Army

and Air Force Organisation, they would work on the assumption that such land came within the definition of "Crown land" under s. 87 (1).

No doubt you are well aware of *Territorial and Auxiliary Forces Association of the County of London* v. *Nichols* [1949] 1 K.B. 35, in which the Court of Appeal held that "a County territorial association is, like a Minister or an organ of the Central Government, a direct emanation from the Crown and shares its immunity from the [Rent Restrictions] Acts." We might mention that the authority of this case is not affected by the recent Crown Lessees (Protection of Sub-Tenants) Act, 1952 (15 & 16 Geo. 6 & 1 Eliz. 2, c. 40). [J. B.]

398. *Development charge—10 per cent. tolerance—pre-contract inquiries*

We act for a company which carries on business as building contractors.

For some years prior to November, 1950, the company was the owner of land on both sides of a certain road on which stood various buildings used in connection with the company's business.

In November, 1950, the company accepted an offer, subject to contract, for the purchase of the land and buildings on one side of the road only. We forwarded the draft contract which incorporated the National Conditions of Sale, 15th ed., to the prospective purchaser's solicitors. They submitted the usual pre-contract inquiries which included the following:—

> "Is the proposed vendor aware of any order, notice, act, matter or thing made, done or omitted under the Town and Country Planning Acts affecting the land to be sold?"

to which our client's reply was "No."

Contracts were in due course exchanged. Nothing occurred in subsequent correspondence to vary in any way the above reply which was confirmed on requisitions. Completion took place on February 1, 1951, when, in accordance with the terms of the contract, the vendor's claim for loss of development value under the Town and Country Planning Act, 1947, was also assigned to the purchaser.

It appears that prior to exchange of contracts the company, through its surveyors, had claimed exemption from development charge under s. 78 of the Act of 1947 in respect of a plant repair shop which had been erected some time previously,

and the claim was being disputed by the Central Land Board. The repair shop was on the land being retained by the company and not on that the subject of the sale. The surveyors, while not forgoing such claim, investigated the question of the company's 10 per cent. tolerance under the Act, and by taking the land on both sides of the road into consideration (including demolished buildings, etc.), it seemed that the tolerance would just about result in exemption from development charge. The position was not clear owing to absence of proof on the cube of the demolished buildings.

When eventually the Central Land Board issued their determination at "nil" no reasons were given, but it was decided to leave the matter there as at that time no settlement had been reached on the company's claim for loss of development rights under Part VI of the Act. In fact, the company's surveyors were only informed last August that the "nil" determination was based on the 10 per cent. tolerance and not on the s. 78 claim.

In July last we received a letter from the purchaser's solicitors informing us that when their client purchased he had intended making certain alterations to the factory premises as soon as circumstances permitted and the necessary consents and licences could be obtained. Such consents and licences had then been received and the matter taken up with the Central Land Board in the usual manner in connection with the question of development charge. It was anticipated that there would be no development charge because the development contemplated was expected to be covered by the 10 per cent. tolerance. The purchaser, however, was very surprised when, on making the necessary application to the Central Land Board, he found that the 10 per cent. tolerance had already been used or taken up. The purchaser, therefore, contends that the action of the company above detailed, having deprived him of his 10 per cent. tolerance claim in respect of the property purchased, he has not received the full benefit attaching thereto, and he holds the company responsible for the loss sustained. It is estimated that the value of the full 10 per cent. tolerance on the whole of the land is about £800, of which £500 might be applicable to the land sold to the purchaser.

Your opinion is requested as to whether the purchaser has a claim against the company, and if so, on what grounds. [W. H. & M.]

ANSWER

I do not think that the purchaser has any claim. The pre-contract inquiry only relates to the land to be sold whereas at that stage the only land affected was other land which was not to be sold. It is admitted that the one transaction affects now the land which has been sold but it is not expected that a solicitor should have a mind like a corkscrew and if the purchaser wanted assurance on this point he should have raised it more specifically. Reference may be made to *Mahon* v. *Ainscough* [1952] W.N. 68; and to a recent county court case, *Wharton* v. *Pagdin*, reported in the Estates Gazette on September 20, 1952, at p. 260. See also the comments in the Law Society's Gazette of June, 1952, at p. 229. [R. P. C.]

399. *Development plan—inquiry objections*

Clients of ours own freehold properties which are let on ground leases expiring in about 20 years time. These properties are within the area covered by a county development plan which has just been submitted to the Minister. The particular properties, and, of course, some adjoining ones, are included in an area which according to the plan are to be re-developed through the six to 20-year period, but when we discussed the matter with the county planning officer, we were informed that the proposals were only very vague and he was not at all sure that there would be any development even during that period.

We have to advise our clients with regard to making objections to this proposal at the public inquiry which, presumably, will be held shortly. It would, of course, be possible to pursue the objection that we have already made at this inquiry, but by doing so our clients would be involved in expenditure which they quite naturally wish to avoid if possible.

We understand that each local planning authority has to submit revised development plans showing any amendments or alterations every five years, the first question which we would like you to answer is, therefore:—Is there to be a full public inquiry at which our clients can be represented when these plans are submitted to the Minister in the future? If there is to be a public inquiry then no doubt our clients' objection could be dealt with then; thus we come to the second question, namely:—If we leave the question of an objection until the second inquiry, if any, would our clients'

position be prejudiced having regard to the fact that although they object to the plan they did not pursue this objection at the inquiry? [N. H. G.]

ANSWER

1. As the law at present stands, a public local inquiry may be expected, but the Minister may decide to dispense with it. If there is no inquiry, any objector is to have an opportunity of being heard before a person appointed by the Minister; see Town and Country Planning (Development Plans) Regulations, 1948 (S.I. 1948, No. 1767), art. 17, and definition of "Development Plan" in art. 2 (1) thereof, to include proposals for alterations or additions.

2. The difficulty as I see it here is that no "alteration or addition" to the plan will be needed at the end of five years; as the plan now stands, the development to which objection is taken, is *now* provided for. I think it would be dangerous to let the present inquiry go without recording at least a formal objection; otherwise the inquirers' clients may not be able to raise the point on any proposal for compulsory acquisition of their property that may be made in the future (see s. 45 (1))—assuming that the land is "designated" in the plan. [J. F. G.]

400. *Planning permission—bungalow on reduced site, where interim development permission obtained*

A in 1944 applied for permission to erect a bungalow in the south-east corner of a field of five acres which he owned and which had a frontage of approximately 290 feet to the highway, and on October 9, 1944, interim development permission was given and consent was also obtained under the Restriction of Ribbon Development Act, 1935. A has not proceeded with the building owing to the difficulty in obtaining a building licence.

The consent is preserved by s. 77 of the 1947 Act. A subsequently sold off from the land three plots each with a frontage to the highway and a plot at the back of the field and then retained approximately one acre with a frontage to the highway of about 140 feet which comprises the south-east corner of the field in which the erection of the bungalow was authorised by the 1944 permission.

A subsequently obtained a certificate under s. 80 of the above Act in respect of the one acre retained by him. In

August last he applied for permission to erect a slightly smaller bungalow than that for which he had previously obtained permission, in the same position and with the same siting as before, but permission was refused.

The point is whether it was necessary for the application of August last to have been made by A or whether he can proceed to erect his bungalow under the permission granted in 1944.

The local planning authority have no objection to the bungalow being smaller but have refused consent because the area of the land on which the bungalow is to be built is now one acre and whereas on the application in 1944 the extent of the land was then shown as five acres. The reasons stated on the refusal were that the erection of a dwelling on a plot of this size is undesirable and the authority are of the opinion that the dwelling could be better sited elsewhere. [L. B. B.]

ANSWER

In the first place, planning permission has clearly to be obtained if the bungalow now to be erected does not comply in all respects with that shown on the 1944 plans. Secondly, it must be considered whether permission is necessary to provide the bungalow with a curtilage of only one acre in lieu of the original proposal for five acres. The inclusion of additional land within the curtilage amounts to development (see the remarks of Lord Goddard C.J. in *Sampson's Executors* v. *Nottinghamshire County Council* [1949] 2 K.B. 439, at p. 447; 1 P. & C.R. 1, at p. 8. See also Bulletin of Selected Appeals Decisions, VIII/20; [1950] J.P.L. 842). It seems that the exclusion of land from a curtilage must also be development. Therefore in my opinion, apart from the change in the size of the bungalow, the application of August last was necessary. [J. F. G.]

401. *Resumption of previous use—permission under Defence Reg.* 68CA.

Is an application under Defence Reg. 68CA necessary to revert back to the use of premises as a dressmaking establishment—established over a period of 14 years up to 1942? The property has just been derequisitioned by the local authority who changed the use to residential. This query has arisen although from a planning angle we are satisfied that the use

is permitted, but are uncertain about the obstacle of the Defence Regulation. [B. B.]

ANSWER

An application is necessary unless there is living accommodation attached to the dressmaking establishment and the owners of the business live on the premises. [R. P. C.]

Progress of Development Plans

(*Continued from p. 675*)

operative as from the dates indicated. Any application to the High Court to question the validity of a plan or any provision therein must be made within six weeks from the date when notice of approval of the plan was first published.

20. Radnorshire County Council.
Approved (*with modifications*): October 22, 1952.

London County Council Inquiries

The Ministry of Housing and Local Government have announced that objections relating to Paddington and St. Marylebone will be heard commencing on Monday, December 1, 1952, at the inquiry into objections to the County of London Development Plan (see the groups set out at pp. 620–21, *ante*).

SCOTLAND

(*Continued from p. 506, ante*)

The following is further information about development plans in Scotland. Objections should be sent to the Secretary of State for Scotland at St. Andrew's House, Edinburgh 1.

Plans Submitted

S. 8. Perth Town Council.
Submitted to Secretary of State: October 1, 1952.
Closing date for objections: November 29, 1952.

Dates of Local Inquiries

S. 3. Paisley Town Council.
Local inquiry: November 3, 1952.

S. 7. Greenock Town Council.
Local inquiry: November 18, 1952.

S. 8. Hamilton Town Council.
Submitted to Secretary of State : October 31, 1952.
Closing date for objections : December 22, 1952.

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